United Nations

# Report of the Human Rights Committee

## Volume I

**General Assembly**
**Official Records**
**Fifty-sixth Session**
**Supplement No. 40 (A/56/40)**

**General Assembly**
Official Records
Fifty-sixth Session
Supplement No. 40 (A/56/40)

# Report of the Human Rights Committee

**Volume I**

United Nations • New York, 2001

*Note*

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0255-2353

## CONTENTS


| | | Paragraphs | Page |
|---|---|---|---|
| Executive summary | | | 12 |
| Chapter | | | |
| I. | JURISDICTION AND ACTIVITIES | 1 - 48 | 14 |
| A. | States parties to the International Covenant on Civil and Political Rights | 1 - 7 | 14 |
| B. | Sessions of the Committee | 8 | 14 |
| C. | Elections, membership and attendance at sessions | 9 - 10 | 15 |
| D. | Solemn declaration | 11 | 15 |
| E. | Election of officers | 12 - 14 | 15 |
| F. | Special rapporteurs | 15 | 15 |
| G. | Amended consolidated guidelines for States parties' reports and amended rules of procedure | 16 | 16 |
| H. | Working groups | 17 - 21 | 16 |
| I. | Commemorative event to mark the twenty-fifth anniversary of the Covenant | 22 | 17 |
| J. | Related United Nations human rights activities | 23 - 24 | 17 |
| K. | Meeting with States parties | 25 - 27 | 18 |
| L. | Derogations pursuant to article 4 of the Covenant | 28 - 34 | 19 |
| M. | General Comment under article 40, paragraph 4 of the Covenant | 35 | 20 |
| N. | Staff resources | 36 - 38 | 20 |
| O. | Publicity for the work of the Committee | 39 | 21 |

CONTENTS (continued)


| Chapter | | Paragraphs | Page |
|---|---|---|---|
| I. (cont'd) | | | |
| | P. Documents and publications relating to the work of the Committee | 41 - 45 | 21 |
| | Q. Future meetings of the Committee | 46 - 47 | 22 |
| | R. Adoption of the report | 48 | 23 |
| II. | METHODS OF WORK OF THE COMMITTEE UNDER ARTICLE 40 OF THE COVENANT: NEW DEVELOPMENTS | 49 - 61 | 24 |
| | A. Recent decisions on procedures | 50 - 54 | 24 |
| | B. Concluding observations | 55 | 25 |
| | C. Links to other human rights treaties and treaty bodies | 56 - 58 | 25 |
| | D. Cooperation with other United Nations bodies | 59 - 61 | 27 |
| III. | SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT | 62 - 70 | 28 |
| | A. Reports submitted to the Secretary-General from August 2000 to July 2001 | 63 | 28 |
| | B. Overdue reports and non-compliance by States parties with their obligations under article 40 | 64 - 70 | 28 |
| IV. | CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT | 71 - 86 | 31 |
| | Trinidad and Tobago | 72 | 31 |
| | Denmark | 73 | 34 |
| | Argentina | 74 | 38 |
| | Gabon | 75 | 41 |

CONTENTS (continued)


| Chapter | | Paragraphs | Page |
|---|---|---|---|
| IV. (cont'd) | | | |
| | Peru | 76 | 45 |
| | Venezuela | 77 | 49 |
| | Dominican Republic | 78 | 54 |
| | Uzbekistan | 79 | 59 |
| | Croatia | 80 | 65 |
| | Syrian Arab Republic | 81 | 70 |
| | Netherlands | 82 | 76 |
| | Czech Republic | 83 | 83 |
| | Monaco | 84 | 89 |
| | Guatemala | 85 | 93 |
| | Democratic People's Republic of Korea | 86 | 98 |
| V. | CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL | 87 - 174 | 105 |
| | A. Progress of work | 89 - 96 | 105 |
| | B. Growth of the Committee's caseload under the Optional Protocol | 97 - 98 | 107 |
| | C. Approaches to considering communications under the Optional Protocol | 99 - 101 | 107 |
| | D. Individual opinions | 102 - 103 | 108 |
| | E. Review of decisions declaring communications admissible | 104 - 106 | 109 |
| | F. Issues considered by the Committee | 107 - 166 | 109 |
| | G. Remedies called for under the Committee's Views | 167 - 174 | 129 |

CONTENTS (continued)


| Chapter | | Paragraphs | Page |
|---|---|---|---|
| VI. | FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL | 175 - 202 | 131 |

Annexes

| | | |
|---|---|---|
| I. | STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND TO THE OPTIONAL PROTOCOLS AND STATES WHICH HAVE MADE THE DECLARATION UNDER ARTICLE 41 OF THE COVENANT AS AT 27 JULY 2001 | 147 |
| | A. States parties to the International Covenant on Civil and Political Rights | 147 |
| | B. States parties to the Optional Protocol | 151 |
| | C. States parties to the Second Optional Protocol, aiming at the abolition of the death penalty | 154 |
| | D. States which have made the declaration under article 41 of the Covenant | 156 |
| II. | MEMBERSHIP AND OFFICERS OF THE HUMAN RIGHTS COMMITTEE, 2000-2001 | 159 |
| | A. Membership of the Human Rights Committee | 159 |
| | B. Officers | 161 |
| III. | A. CONSOLIDATED GUIDELINES FOR STATE REPORTS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (as amended at the seventieth session) | 162 |
| | B. REVISED RULES OF PROCEDURE OF THE COMMITTEE (as formally amended at the seventy-first session) | 168 |
| IV. | SUBMISSION OF REPORTS AND ADDITIONAL INFORMATION BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT | 193 |
| V. | STATUS OF REPORTS CONSIDERED DURING THE PERIOD UNDER REVIEW AND OF REPORTS STILL PENDING BEFORE THE COMMITTEE | 199 |

CONTENTS (continued)

Page

Annex

VI. GENERAL COMMENT ADOPTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS ..... 202

General Comment No. 29 on article 4 ..... 202

VII. LIST OF STATES PARTIES' DELEGATIONS THAT PARTICIPATED IN THE CONSIDERATION OF THEIR RESPECTIVE REPORTS BY THE HUMAN RIGHTS COMMITTEE AT ITS SEVENTIETH, SEVENTY-FIRST AND SEVENTY-SECOND SESSIONS ..... 210

VIII. LIST OF DOCUMENTS ISSUED DURING THE REPORTING PERIOD ..... 216

IX. EXCERPTS FROM THE COMMITTEE'S CONTRIBUTION TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE..... 220

X. VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

A. Communication No. 547/1993, Mahuika et al. v. New Zealand (Views adopted on 27 October 2000, seventieth session)

Appendix

B. Communication No. 630/1995, Mazou v. Cameroon (Views adopted on 26 July 2001, seventy-second session)

C. Communication No. 675/1995, Toala et al. v. New Zealand (Views adopted on 2 November 2000, seventieth session)

Appendix

D. Communication No. 687/1996, Rojas García v. Colombia (Views adopted on 3 April 2001, seventy-first session)

Appendix

E. Communication No. 727/1996, Paraga v. Croatia (Views adopted on 4 April 2001, seventy-first session)

CONTENTS (continued)

Page

Annex

X. (cont'd)

F. Communication No. 736/1997, Ross v. Canada
(Views adopted on 18 October 2000, seventieth session)

Appendix

G. Communication No. 790/1997, Cheban v. The Russian Federation
(Views adopted on 24 July 2001, seventy-second session)

H. Communication No. 806/1998, Thompson v. St. Vincent and the Grenadines (Views adopted on 18 October 2000, seventieth session)

Appendix

I. Communication No. 818/1998, Sextus v. Trinidad and Tobago
(Views adopted on 16 July 2001, seventy-second session)

Appendix

J. Communication No. 819/1998, Kavanagh v. Ireland
(Views adopted on 4 April 2001, seventy-first session)

K. Communication No. 821/1998, Chongwe v. Zambia
(Views adopted on 25 October 2000, seventieth session)

L. Communication No. 833/1998, Karker v. France
(Views adopted on 26 October 2000, seventieth session)

Appendix

M. Communication No. 839/1998, 840/1998 and 841/1998
Mansaraj et al. v. Sierra Leone, Gborie et al. v. Sierra Leone, Sesay et al. v. Sierra Leone
(Views adopted on 16 July 2001, seventy-second session)

N. Communication No. 846/1999, Jansen-Gielen v. the Netherlands
(Views adopted on 3 April 2001, seventy-first session)

Appendix

CONTENTS (continued)

Page

Annex

X. (cont'd)

O. Communication No. 855/1999, Schmitz-de-Jong v. the Netherlands (Views adopted on 16 July 2001, seventy-second session)

P. Communication No. 857/1999, Blazek et al. v. the Czech Republic (Views adopted on 12 July 2001, seventy-second session)

Appendix

Q. Communication No. 858/1999, Buckle v. New Zealand (Views adopted on 25 October 2000, seventieth session)

R. Communication No. 869/1999, Piandiong et al. v. the Philippines (Views adopted on 19 October 2000, seventieth session)

Appendix

S. Communication No. 884/1999, Ignatane v. Latvia (Views adopted on 25 July 2001, seventy-second session)

T. Communication No. 930/2000, Winata v. Australia (Views adopted on 26 July 2001, seventy-second session)

Appendix

XI. DECISIONS OF THE HUMAN RIGHTS COMMITTEE DECLARING COMMUNICATIONS INADMISSIBLE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

A. Communication No. 762/1997, Jensen v. Australia (Decision adopted on 22 March 2001, seventy-first session)

B. Communication No. 787/1997, Gobin v. Mauritius (Decision adopted on 16 July 2001, seventy-second session)

Appendix

CONTENTS (continued)

Page

Annex

XI. (cont'd)

C. Communication No. 791/1997, Singh v. New Zealand
(Decision adopted on 12 July 2001, seventy-second session)

D. Communication No. 808/1998, Rogl v. Germany
(Decision adopted on 25 October 2000, seventieth session)

E. Communication No. 822/1998, Vakoumé v. France
(Decision adopted on 31 October 2000, seventieth session)

F. Communication No. 831/1998, Meiers v. France
(Decision adopted on 16 July 2001, seventy-second session)

G. Communication No. 832/1998, Walravens v. Australia
(Decision adopted on 25 July 2001, seventy-second session)

Appendix

H. Communication No. 834/1998, Kehler v. Germany
(Decision adopted on 22 March 2001, seventy-first session)

I. Communication No. 866/1999, Torregrosa Lafuente et al. v. Spain
(Decision adopted on 16 July 2001, seventy-second session)

Appendix

J. Communication No. 905/2000, Asensio López v. Spain
(Decision adopted on 23 July 2001, seventy-second session)

K. Communication No. 935/2000, Mahmoud v. Slovakia
(Decision adopted on 23 July 2001, seventy-second session)

L. Communication No. 947/2000, Hart v. Australia
(Decision adopted on 25 October 2000, seventieth session)

M. Communication No. 948/2000, Devgan v. Canada,
(Decision adopted on 30 October 2000, seventieth session)

N. Communication No. 949/2000, Keshavjee v. Canada
(Decision adopted on 2 November 2000, seventieth session)

CONTENTS (continued)

Page

Annex

XI. (cont'd)

O. Communication No. 952/2000, Parun and Bulmer v. New Zealand
(Decision adopted on 22 March 2001, seventy-first session)

P. Communication No. 963/2001, Uebergang v. Australia
(Decision adopted on 22 March 2001, seventy-first session)

Q. Communication No. 991/2001, Neremberg v. Germany
(Decision adopted 27 July 2001, seventy-second session)

## EXECUTIVE SUMMARY

The present annual report covers the period from 1 August 2000 to 31 July 2001 and the seventieth, seventy-first and seventy-second sessions of the Committee. Since the adoption of the last report, three States (Bangladesh, Botswana and Ghana) have become parties to the Covenant, three States (Ghana, Lesotho and Guatemala) have become parties to the Optional Protocol and one State (Bosnia and Herzegovina) has become a party to the Second Optional Protocol, thus bringing the total of States parties to these instruments to 148, 98 and 45, respectively.

Six new members were elected to the Committee at the Twentieth Meeting of States parties to the Covenant on 14 September 2000. On 19 March 2001, Mr. P.N. Bhagwati was elected Chairperson of the Committee for a period of two years. Messrs. A. Amor, D. Kretzmer and H. Solari-Yrigoyen were elected Vice-Chairpersons and Mr. E. Klein Rapporteur.

During the period under review, the Committee considered 15 initial and periodic reports under article 40 and adopted concluding observations on them (seventieth session: Trinidad and Tobago, Denmark, Argentina, Gabon and Peru; seventy-first session: Venezuela, Dominican Republic, Uzbekistan, Croatia and Syrian Arab Republic; seventy-second session: Netherlands, Czech Republic, Monaco, Guatemala and the Democratic People's Republic of Korea). Under the Optional Protocol procedure, it adopted 22 Views on communications, declared 7 communications admissible and 17 inadmissible. Consideration of 9 communications was discontinued without the Committee adopting a formal decision on the matter (see chapter IV for concluding observations, chapter V for information on Optional Protocol decisions).

In July 2001, the one thousandth individual communication was registered under the Optional Protocol. The number of communications to be registered under this procedure will in all likelihood grow considerably over the next few years, as the number of States parties to the Optional Protocol continues to grow and the procedure becomes better known.

At the seventieth session of the Committee, the High Commissioner for Human Rights informed the Committee of the launch of a plan of action for three treaty bodies, including the Committee, and the establishment of a petitions team, designed to provide better services to individual human rights complaints procedures, including the procedure under the Optional Protocol. The Petitions Team has since become operational and the Committee has expressed the hope that once it has consolidated its working methods, this team will help reduce, and ultimately eliminate, the existing backlog in the examination of communications under the Optional Protocol (see chapter I, paragraphs 37-39).

Through its Special Rapporteur for follow-up on Views, the Committee has continued to seek to ensure implementation of its Views by States parties by arranging meetings with representatives of States parties which have not responded to the Committee's request for information about the measures taken to give effect to its Views, or which have given unsatisfactory replies to the Committee's request. However, follow-up missions to the States parties concerned could not be conducted, owing to lack of funds (see Chapter VI, paragraph 203).

On 24 July 2001 (seventy-second session), the Committee adopted General Comment No. 29 [72] on article 4 of the Covenant, concerning derogations from provisions of the Covenant in times of public emergency (see annex VI).

In its resolution 2000/14 of 17 April 2000, the Commission on Human Rights invited the Human Rights Committee to submit a contribution to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In the summer and autumn of 2000, the Committee discussed and finalized its contribution to the preparations for the World Conference. The resulting document was made available to the second session of the Preparatory Committee for the Conference in May 2001 (see chapter I, section J and annex IX).

For several years, the Committee has been seeking to deal with the situation of States which have failed to honour their reporting obligations under article 40 of the Covenant or which have repeatedly failed to appear before the Committee although the examination of their report had been scheduled. The Committee has decided that it may examine the application of the Covenant in those States parties that have failed to report to the Committee in spite of repeated reminders, and examine the reports of States which fail to appear before the Committee. The Committee has also introduced a procedure for follow-up to concluding observations on State reports adopted by the Committee (see chapter II, paragraphs 51 and 52).

During its seventieth session, on 30 October 2000, the Committee organized its first official consultative meeting with States parties. The meeting provided an opportunity to engage in an exchange of views on current problems with regard to, and ways of improving, the reporting and the Optional Protocol procedures; avoidance of duplication with the work of other treaty bodies; cooperation with other treaty bodies on issues of common concern; and the problem of adequate resourcing for Committee activities.

On 26 March 2001, the Committee held a special commemorative meeting to mark the twenty-fifth anniversary of the entry into force of the Covenant. The Committee Chairperson and two former Committee Chairpersons traced the Committee's continuously evolving role in the United Nations human rights treaty system and its contribution to the development of international law. Other Committee members made presentations on the Committee's relations with States parties under the reporting procedure, the Committee's contribution to an emerging universal human rights jurisprudence under the Optional Protocol procedure, and the importance of the contribution of non-governmental organizations to the Committee's activities. Representatives of several non-governmental organizations participated in the event (see chapter I, section I).

# CHAPTER I. JURISDICTION AND ACTIVITIES

## A. States parties to the International Covenant on Civil and Political Rights

1. As at 27 July 2001, the closing date of the seventy-second session of the Human Rights Committee, there were 148 States parties[1] to the International Covenant on Civil and Political Rights, and 98 States parties to the (first) Optional Protocol to the Covenant[2] Both instruments have been in force since 23 March 1976.

2. Since the last report Bangladesh, Botswana and Ghana have become parties to the Covenant.

3. Since the last report three more States have ratified the Optional Protocol, Ghana, Guatemala and Lesotho, thus bringing the number of States parties to 98.

4. As at 27 July 2001 there was no change in the number of States (47) which had made the declaration envisaged under article 41, paragraph 1, of the Covenant. In this respect, the Committee appeals to States parties to make the declaration under article 41 of the Covenant and to use this mechanism, with a view to making more effective the implementation of the provisions of the Covenant.

5. The Second Optional Protocol, aiming at the abolition of the death penalty, entered into force on 11 July 1991. As at 27 July 2001, there were 45 States parties to this Protocol, an increase of one since the Committee's last report: Bosnia and Herzegovina.

6. A list of States parties to the Covenant and to the two Optional Protocols, indicating those States which have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

7. Reservations and other declarations made by a number of States parties in respect of the Covenant and/or the Optional Protocols are set out in the notifications deposited with the Secretary-General. The Committee notes with regret that no reservations to the Covenant were withdrawn during the reporting period and encourages States parties to consider the possibility of withdrawing reservations to the Covenant.

## B. Sessions of the Committee

8. The Human Rights Committee has held three sessions since the adoption of its previous annual report. The seventieth session (1868th to 1896th meetings) was held at the United Nations Office at Geneva from 16 October to 3 November 2000, the seventy-first session (1897th to 1926th meetings) was held at United Nations Headquarters from 19 March to 6 April 2001 and the seventy-second session (1927th to 1955th meetings) was held at the United Nations Office at Geneva from 9 to 27 July 2001.

### C. Elections, membership and attendance at sessions

9. At the Twentieth Meeting of States Parties to the Covenant, held at United Nations Headquarters on 14 September 2000, Mr. Maurice Glèlè Ahanhanzo (Benin), Mr. Rafael Rivas Posada (Colombia), Sir Nigel Rodley (United Kingdom), Mr. Ahmed Tawfik Khalil (Egypt), Mr. Ivan Shearer (Australia) and Mr. Patrick Vella (Malta) were elected to the seats left vacant by the expiration of the mandates of Viscount Colville of Culross, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Fausto Pocar, Mr. Roman Wieruszewski and Mr. Abdallah Zakhia. Messrs. Rajsoomer Lallah, Martin Scheinin and Maxwell Yalden were re-elected to the Committee for a term of four years.

10. Seventeen members of the Committee participated in the seventieth session. All the members of the Committee participated in the seventy-first and seventy-second sessions.

### D. Solemn declaration

11. At the 1897th meeting (seventy-first session), on 19 March 2001, Mr. Glèlè Ahanhanzo, Mr. Khalil, Mr. Rivas Posada, Sir Nigel Rodley, Mr. Shearer and Mr. Vella made a solemn declaration in accordance with article 38 of the Covenant and rule 16 of the Committee's rules of procedure before assuming their functions.

### E. Election of officers

12. During the seventieth session in October-November 2000, the members of the Bureau remained those listed in the annual report for 2000 (see A/55/40, volume I, chapter I, section E).

13. The members of the Bureau, elected at the Committee's 1897th meeting (seventy-first session), for a term of two years, in accordance with article 39, paragraph 1, of the Covenant, are the following:

| | |
|---|---|
| Chairperson: | Mr. Prafullachandra Natwarlal Bhagwati |
| Vice-Chairpersons: | Mr. Abdelfattah Amor<br>Mr. David Kretzmer<br>Mr. Hipólito Solari-Yrigoyen |
| Rapporteur: | Mr. Eckart Klein |

14. During the Committee's seventieth to seventy-second sessions, the Bureau held nine meetings (three per session) with interpretation. At its first meeting during the seventy-first session, the Bureau decided to record its decisions in formal minutes, to be kept as a record of all decisions taken by the Committee's Bureau.

### F. Special rapporteurs

15. The Special Rapporteur on follow-up of Views, Ms. Christine Chanet, met with representatives of the Netherlands, Peru and Austria during the seventieth session. During the

seventy-first session Ms. Chanet met with representatives of Nicaragua, Madagascar, Togo, Suriname and Zambia. She presented a report on her follow-up activities to the Committee at its seventy-first session. Also at the seventy-first session, Ms. Chanet's mandate came to an end and the Committee designated Mr. Nisuke Ando as the new Special Rapporteur on follow-up of Views. During the seventy-second session, Mr. Ando met with representatives of Zambia. The Special Rapporteur on new communications, Mr. David Kretzmer, continued his functions until the start of the seventy-first session, registered 32 communications, transmitted these communications to the States parties concerned and issued two decisions on interim measures of protection pursuant to rule 86 of the Committee's rules of procedure. At the beginning of the seventy-first session, Mr. Kretzmer's mandate came to an end and the Committee designated Mr. Martin Scheinin as the Committee's new Special Rapporteur for new communications. Up to the end of the seventy-second session, Mr. Scheinin had registered 31 communications, transmitted these to the State party concerned and issued 4 decisions on interim measures of protection under rule 86 of the Committee's rules of procedure.

### G. Amended consolidated guidelines for States parties' reports and amended rules of procedure

16. During its sixty-seventh session, the Committee adopted the revised consolidated guidelines for State reports (CCPR/C/66/GUI/Rev.1, annex III to the Committee's annual report for the year 2000 (A/55/40, vol. I)). As a result of the proposals emanating from a working group of the Committee which met during the sixty-eighth and sixty-ninth sessions and which discussed proposed amendments to the Committee's rules of procedure in respect of the reporting procedure, the Guidelines were once again modified during the seventieth session, and were reissued as document CCPR/C/66/GUI/Rev.2 on 26 February 2001 (see annex III.A to the present report). The revised Guidelines are reproduced in the compendium of reporting guidelines of all human rights treaty bodies (HRI/GEN/2/Rev.1 of 9 May 2001). The Committee's rules of procedure were revised accordingly during the seventieth and seventy-first sessions (see annex III.B).

### H. Working groups

17. In accordance with rule 62 and rule 89 of its rules of procedure, the Committee established working groups which met before each of its three sessions. Working groups were entrusted with the task of making recommendations (a) regarding communications received under the Optional Protocol; and (b) for the purposes of article 40, including the preparation of lists of issues concerning the initial or periodic reports scheduled for consideration by the Committee. An ad hoc working group was mandated to prepare the Committee's contributions to the World Conference against Racism, to be held in Durban, South Africa, from 31 August to 7 September 2001.

18. Representatives of specialized agencies and subsidiary bodies of the United Nations, particularly the International Labour Organization, the Office of the United Nations High Commissioner for Refugees and the World Health Organization, provided advance information on the reports to be considered by the Committee. The working groups also considered oral and written presentations by representatives of non-governmental organizations, including Amnesty International, Human Rights Watch, PEN International, the International Service for

Human Rights, the International League for Human Rights, the Lawyers' Committee for Human Rights and several national human rights non-governmental organizations. The Committee welcomed the increasing interest shown by and the participation of these agencies and organizations and thanked them for the information provided.

19. Seventieth session (9-13 October 2000): a combined working group on communications and article 40 was composed of Mr. Amor, Ms. Evatt, Mr. Bhagwati, Viscount Colville of Culross and Mr. Solari-Yrigoyen. Mr. Amor was elected Chairperson-Rapporteur.

20. Seventy-first session (12-16 March 2001): a combined working group on communications and article 40 was composed of Mr. Amor, Mr. Ando, Mr. Bhagwati, Mr. Henkin, Mr. Klein, Mr. Solari-Yrigoyen and Mr. Yalden; Mr. Ando was elected Chairperson-Rapporteur.

21. Seventy-second session (2-6 July 2001): the working group on communications and article 40 was composed of Mr. Bhagwati (as of 3 July 2001), Ms Chanet, Mr. Henkin, Mr. Khalil, Mr. Kretzmer, Ms. Medina Quiroga, Mr. Rivas Posada, Mr. Solari-Yrigoyen and Mr. Yalden. It decided to divide its activities: Mr. Kretzmer was elected Chairperson-Rapporteur of a working group on communications; Mr. Yalden was elected Chairperson-Rapporteur of a working group on article 40.

### I. Commemorative event to mark the twenty-fifth anniversary of the Covenant

22. During its seventy-first session, on 26 March 2001, the Committee held a commemorative meeting to mark the twenty-fifth anniversary of the entry into force of the Covenant. The High Commissioner for Human Rights transmitted a message of congratulations to the Committee. The Committee Chairperson and two former Chairpersons, Ambassador Andreas Mavrommatis and Judge Fausto Pocar, addressed the Committee's ever more complex functions, its continuously evolving role in the United Nations human rights treaty system, and its contribution to the development of international law, especially in the areas of reservations and State succession. Mr. Henkin underlined the role of States parties in the implementation of the provisions of the Covenant. Ms. Chanet addressed the development of the Committee's role under article 40 of the Covenant and its relations with States parties; Mr. Scheinin commented on the Committee's contribution to an emerging universal human rights jurisprudence, through its decisions and Views adopted under the Optional Protocol to the Covenant; and Ms. Medina Quiroga highlighted the importance of the contribution of non-governmental organizations and civil society to the Committee's work. Representatives of several non-governmental organizations and civil society in turn expressed their appreciation of the Committee's work in promoting respect for civil and political rights at the international and local levels.

### J. Related United Nations human rights activities

23. At all of its sessions, the Committee was informed about activities of United Nations bodies dealing with human rights issues. In particular, the relevant general comments and concluding observations of the Committee on the Rights of the Child, the Committee on the

Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, and the Committee against Torture were made available to the members of the Human Rights Committee. Relevant developments in the General Assembly and the Commission on Human Rights were also discussed. The High Commissioner for Human Rights addressed the Committee at its seventieth session and explained the creation and objectives of the Petitions Team. The Deputy High Commissioner addressed the Committee at its seventy-second session.

24. In March 2000, on the occasion of the International Day against Racism, the Commission on Human Rights invited the Committee to contribute to the preparatory process of the World Conference against Racism and Xenophobia. The Committee established a working group which, by drawing primarily on a draft and contribution prepared by Ms. Evatt, was able to finalize the Committee's contribution to the second session of the Preparatory Committee (May-June 2001) and to the Conference itself by the end of the seventieth session. The Committee thereupon formally adopted the document as its contribution to the Conference. The contribution is reproduced in its essential parts in annex IX. The Committee's designated representative to the second session of the Preparatory Committee, Mr. Solari-Yrigoyen, attended the regional preparatory meeting for the Conference in Santiago de Chile in November 2000, as well as the second session of the Preparatory Committee. He made presentations at both meetings on the Committee's behalf and provided written and oral briefs on both meetings to the Committee. During the Conference, the Committee will be represented by its Chairperson, Mr. Bhagwati, by Mr. Solari-Yrigoyen and by Mr. Lallah.

### K. Meeting with States parties

25. During its seventieth session, on 30 October 2000, the Committee held a meeting with representatives of States parties to the Covenant. The meeting was called with a view to exchanging ideas on how the Committee's work could be made more efficient in a way that is positive for the Committee, for States parties and for the persons enjoying the rights enshrined in the Covenant. It was attended by 55 representatives of States parties and observers. Principal subjects of discussions included:

(a) Current difficulties with the country reporting process and possible solutions;

(b) Minimizing duplication and overlap with the activities of other treaty bodies in the consideration of reports;

(c) Cross-cutting issues of relevance to all treaty bodies and the importance of the meeting of Chairpersons;

(d) Current difficulties with the Optional Protocol procedure and possible solutions;

(e) The need for better resourcing of the Committee's activities;

(f) Improving opportunities for dialogue between States parties and the Committee.

26. State party representatives noted with appreciation that the meeting provided a timely forum for an exchange of views concerning the Committee's procedures and issues affecting the work of treaty bodies in general. Cooperation between States parties, the Committee and non-governmental organizations was discussed and encouraged.

27. The Committee is encouraged by the results of the first consultation with States parties. On 26 July 2001, it decided to organize a similar consultation during its seventy-sixth session, in October 2002. The Committee would welcome suggestions from States parties for further subjects of discussion.

### L. Derogations pursuant to article 4 of the Covenant

28. Article 4, paragraph 1, of the Covenant stipulates that in time of public emergency States parties may take measures derogating from certain of their obligations under the Covenant. Pursuant to paragraph 2, no derogation is allowed from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18. Pursuant to paragraph 3, any derogation must be immediately notified to the States parties through the intermediary of the Secretary-General. A further notification is required upon the termination of the derogation.

29. In cases of derogation, the Committee considers whether the State party has satisfied the conditions of article 4 of the Covenant and, in particular, insists that the derogation be terminated as soon as possible. When faced with situations of armed conflict, both external and internal, which affect States parties to the Covenant, the Committee will necessarily examine whether these States parties are complying with all of their Covenant obligations. On the interpretation of article 4 of the Covenant, reference is made to the Committee's practice under the reporting and Optional Protocol procedures. The Committee's General Comment No. 29, adopted during the seventy-second session, establishes guidelines that States parties are required to respect during a state of emergency (see annex VI to the present report).

30. For States parties to the Covenant, the continued practice of derogations has frequently been a subject of dialogue in the context of the consideration of State party reports under article 40 of the Covenant, and has as often been identified as a matter of concern in concluding observations, including some of those adopted during the reporting period. While not questioning the right of States parties to derogate from certain obligations in states of emergency, in conformity with article 4 of the Covenant, the Committee always urges States parties to withdraw the derogations as soon as possible.

31. For States parties to the Optional Protocol, the Committee has considered derogations in the context of the consideration of individual communications. The Committee has consistently given a strict interpretation to derogations, and in some cases has determined that notwithstanding the derogation the State was responsible for violations of the Covenant.

32. During the period under review, the Government of the United Kingdom of Great Britain and Northern Ireland notified other States parties through the intermediary of the Secretary-General, on 20 February 2001, that it had terminated the United Kingdom's derogation from article 9, paragraph 3, of the Covenant with effect from 26 February 2001. It specified, however, that that termination of the derogation only applied to the United Kingdom of

Great Britain and Northern Ireland. It was not yet possible to terminate the derogation in respect of the Crown Dependencies, i.e. Jersey, Guernsey and the Isle of Man. The latter were actively considering enacting or amending their current prevention of terrorism legislation so as to reflect the changes in the United Kingdom legislation made under the Terrorism Act 2000.

33. Also during the period under review, the Government of Ecuador notified other States parties, through the intermediary of the Secretary-General, on 21 February 2001, pursuant to article 4, paragraph 3, of the Covenant, that a state of emergency had been declared for the entire territory of the Republic by Executive Decree No. 1214 of 2 February 2001; the said Decree stipulated that the measure was being adopted to overcome the adverse consequences of the economic crisis affecting Ecuador, which had created a situation of serious internal unrest, and that the provisions of the Covenant derogated from were articles 12, 17 and 21. By Decree No. 1228 of 9 February 2001, the State of emergency was lifted.

34. On 27 July 2001, the Government of Guatemala notified other States parties, through the intermediary of the Secretary-General and in accordance with article 4, paragraph 3, of the Covenant, of temporary derogation from the rights enshrined in articles 6, 9 and 26 of the Constitution of Guatemala. The said derogation had been promulgated by Government Decree 2-2001 on 17 July 2001, was valid until 19 August 2001 and was applicable throughout the territory of the Republic. The State party justified the temporary derogation by the escape, from a maximum security prison, of 78 prisoners considered to be extremely dangerous, in whose trials a large number of Guatemalan citizens were involved as witnesses or against whom many citizens had filed complaints. Those citizens were said to be subject to threats and intimidation by the escaped prisoners.

### M. General Comment under article 40, paragraph 4, of the Covenant

35. At its sixty-sixth session, Mr. Martin Scheinin submitted a draft general comment on article 4, which was discussed from the sixty-seventh to the seventy-second sessions. Upon conclusion of the second reading of the draft general comment, the Committee established a working group to check the consistency of the English, French and Spanish language versions of the draft. At its 1950th meeting on 24 July 2001 (seventy-second session), the Committee adopted General Comment No. 29 on derogations from the provisions of the Covenant (CCPR/C/21/Rev.1/Add.11), which is reproduced as annex VI to the present report.

### N. Staff resources

36. During its sixty-seventh session, in October 1999, the Committee welcomed the commitment expressed by the United Nations High Commissioner for Human Rights, Ms. Mary Robinson, to improve the staff situation referred to by the Committee in past annual reports. The High Commissioner addressed the Committee during the seventieth session and informed it of the launch of the Plan of Action for three Geneva-based treaty bodies, including the Committee, and the establishment of a petitions team designed to provide better service to individual human rights complaints procedures, including the procedure under the Optional Protocol to the Covenant.

37. The Committee welcomed the launch of the Plan of Action and the creation of a petitions team, and noted that the recruitment of three consultants for the petitions team and the addition of two junior Professional officers for the reporting procedure and the petitions team would go a long way to redressing the situation of serious understaffing previously noted by the Committee. It further noted with appreciation that a newly established post for communications had been filled. The Committee is confident that these developments will help it address, and ultimately eliminate, the serious backlog in the examination of communications, and that they will result in the provision of better services to the Committee. It notes that, in comparison to previous years, the backlog of communications has already been reduced considerably, and that the lead time between the receipt and the processing of communications has been shortened from as much as a year in isolated cases to several weeks.

38. While the Committee is encouraged by the initial results of the Plan of Action and the work of the petitions team, it reiterates the need for sufficient experienced Professional and other staff to be allocated to all aspects of its work. As the Plan of Action depends on extrabudgetary contributions made by donors, its time-frame may be finite. Ultimately, only the provision of additional established posts will guarantee the Committee's ability to discharge itself properly and in a timely way of all of its mandated functions.

### O. Publicity for the work of the Committee

39. The Chairperson, accompanied by members of the Bureau, met with representatives of the press at all of the Committee's three sessions. The Committee notes that with the exception of academic institutions (see paragraph 45 below), awareness of its activities still leaves much to be desired, and that publicity must be enhanced to reinforce the protection mechanisms under the Covenant.

### P. Documents and publications relating to the work of the Committee

40. The Committee continued to be concerned about the difficulties it faced in regard to the late issuance of Committee documents, particularly reports by States parties, as a consequence of delays in editing and translation. In this connection the Committee noted that pursuant to its recommendation, made during its sixty-sixth session, reports of States parties, whenever possible, are now being submitted for translation without editing, and that this new practice has reduced the delay in issuing reports.

41. The Committee noted further that the summary records of the Committee's meetings were issued only after considerable delay; summary records of the meetings held in New York were sometimes issued after a lapse of almost two years.

42. In past annual reports, the Committee repeatedly urged that the publication of volumes 3 and 4 of the Selected Decisions under the Optional Protocol be undertaken as a matter of priority. This was also requested as part of the Plan of Action. The Committee appreciates that work has been undertaken in the Secretariat with a view to publication of volumes 3 and 4, but

notes with concern that those volumes have still not been issued, primarily owing to technical and financial constraints. It hopes and urges that publication will be pursued as a matter of priority.

43. The Committee reiterated its concern over the discontinuation of the publication of Official Records after 1991-1992, and noted with regret that resources had not been made available for the publication of further volumes. This matter was also addressed in the Plan of Action.

44. The Committee had ascertained that the documentary records which had not yet appeared in the Official Records were not all available on the Web site of the Office of the High Commissioner for Human Rights. The Committee asked that urgent efforts be made to ensure that all material not yet published in the Official Records be put on the OHCHR Web site. It asked that the summary records include the lists of issues in relation to the discussion of States parties' reports.

45. The Committee welcomes the publication of its Optional Protocol decisions in the databases of various universities, including the University of Minnesota, United States of America (http://www1.umn.edu/humanrts/undocs/undocs.htm), and the publication of a case-law digest on the Committee's jurisprudence under the Optional Protocol by the University of Utrecht, the Netherlands (SIM Documentation Site, http://sim.law.uu.nl/SIM/Dochome.nsf). Moreover, the Committee notes with satisfaction that its work is becoming better known thanks to initiatives taken by the United Nations Development Programme and the Department for Public Information. The Committee also appreciates the growing interest in its work shown by universities and other institutions of higher learning. It recommends that the treaty body database of the Web site of the Office of the High Commissioner for Human Rights (www.unhchr.ch) be upgraded regularly, and that all of the Committee's Views and inadmissibility decisions under the Optional Protocol available in electronic format be included in that database.

## Q. Future meetings of the Committee

46. At its seventy-first session, the Committee confirmed the following schedule of meetings for 2002 and 2003. The seventy-fourth session will be held at United Nations Headquarters from 18 March to 5 April 2002, the seventy-fifth session at the United Nations Office at Geneva from 8 to 26 July 2002, the seventy-sixth session at the United Nations Office at Geneva from 14 October to 1 November 2002, the seventy-seventh session at United Nations Headquarters from 17 March to 4 April 2003 and the seventy-eighth session at the United Nations Office at Geneva from 14 July to 1 August 2003.

47. On 27 July 2001, the Committee decided to request an additional week of meetings for its seventy-fifth session, to be held in July 2002. It proposed that the additional meetings be held from 29 July to 2 August 2001. In accordance with rule 27 of the Committee's rules of procedure, the Secretariat drew the Committee's attention to the financial implications of this decision.

## R. Adoption of the report

48. At its 1950th and 1951st meetings, held on 24 July 2001, the Committee considered the draft of its twenty-fifth annual report, covering its activities at its seventieth, seventy-first and seventy-second sessions, held in 2000 and 2001. The report, as amended in the course of the discussion, was adopted unanimously. By virtue of Economic and Social Council decision 1985/105 of 8 February 1985, the Council authorized the Secretary-General to transmit the Committee's annual report directly to the General Assembly.

## CHAPTER II. METHODS OF WORK OF THE COMMITTEE UNDER ARTICLE 40 OF THE COVENANT: NEW DEVELOPMENTS

49. The present chapter summarizes and explains the modifications recently introduced by the Committee to its working methods under article 40 of the Covenant.

### A. Recent decisions on procedures

50. At its sixty-fifth session in March 1999, the Committee decided that the lists of issues for the examination of States parties' reports should henceforth be adopted at the session prior to the examination of the report, thereby allowing a period of at least two months for States parties to prepare for the discussion with the Committee. Central to the consideration of States parties reports is the oral hearing, where the delegations of States parties have the opportunity to answer specific questions from Committee members. Thus, States parties are encouraged to use the list of issues better to prepare for a constructive discussion, but are not expected to submit written answers. This new practice was put into effect at the sixty-sixth session, at which the lists of issues for the sixty-seventh session were adopted. There has been some progress with the implementation of the new practice; the Committee, however, notes that if States parties do submit written answers to lists of issues, they should do so well in advance of the examination of the report, to ensure that the translation of the replies into the Committee's working languages is produced in time.

51. In October 1999, the Committee adopted new consolidated guidelines on State parties' reports, which replaced all prior guidelines and are designed to facilitate the preparation of initial and periodic reports by States parties (see also paragraph 16 above). The guidelines provide for comprehensive initial reports, prepared on an article-by-article basis, and focused periodic reports geared primarily to the Committee's concluding observations on the previous report of the State party concerned. In their periodic reports, States parties need not report on every single article of the Covenant, but only on those provisions identified by the Committee in its concluding observations and those articles in respect of which there have been significant developments since the submission of the previous report. These consolidated guidelines were once again modified during the seventieth session (October 2000) on the basis of proposals made by a working group of the Committee mandated to review the Committee's working methods under article 40 of the Covenant. The revised consolidated guidelines have been issued as document CCPR/C/66/GUI/Rev.2, dated 26 February 2001 (see annex III.A).

52. During the sixty-eighth, sixty-ninth and seventieth sessions of the Committee, a working group composed of Ms. Chanet, Viscount Colville of Culross, Mr. Klein (Chair) and Mr. Yalden discussed possible ways of improving, and making more effective, the Committee's reporting procedure under article 40. This working group proposed relevant amendments to the Committee's rules of procedure, which were discussed by the Committee plenary in detail during the seventieth session. The amendments, which concern primarily the State reporting procedure, are aimed at reducing the reporting burden on States parties and designed to simplify the procedure.

53. The amendments introduce procedures for dealing with situations where States parties have failed to honour their reporting obligations over several reporting cycles, or request a postponement of their scheduled appearance before the Committee at short notice. In both situations, the Committee may henceforth serve notice on the States concerned that it intends to examine, on the basis of material available to it, the measures adopted by that State party with a view to giving effect to the provisions of the Covenant, even in the absence of a report. The amended rules of procedure also introduce a follow-up procedure to the concluding observations of the Committee: rather than a set time limit for the submission of its next report being established in the last paragraph of the concluding observations, the State party will be requested to report back to the Committee within a specified period with responses to the Committee's recommendations, indicating what steps, if any, it has taken to meet the recommendations. Such responses will thereafter be examined by a group of Committee members, and result in the determination by the plenary of the Committee of a definitive time limit for the submission of the next report.

54. Another working group appointed by the Committee and composed of Ms. Chanet, Mr. Klein (Chair), Sir Nigel Rodley and Mr. Yalden made several further proposals for amendments of the rules of procedure during the seventy-first session. The amendments to the rules were formally adopted at the Committee's 1924th meeting, during the seventy-first session. The revised rules of procedure have been issued as document CCPR/C/3/Rev.6 and Corr.1; they are reproduced in annex III.B to the present report. All States parties to the Covenant have been informed of the amendments to the rules of procedure; the Committee has applied the revised rules since the end of the seventy-first session.

### B. Concluding observations

55. Since its decision of 24 March 1992, taken at its 1123rd meeting, the Committee has been adopting concluding observations. The Committee takes the concluding observations as a starting point in the preparation of the list of issues for the examination of the subsequent report of a State party. In some cases the Committee has received comments from the State party, which are issued in document form. During the period under review such comments were received from Trinidad and Tobago and the Syrian Arab Republic. These State party replies have been issued as documents and are available with the Committee's secretariat, or may be consulted on the Web site of the Office of the High Commissioner for Human Rights.

### C. Links to other human rights treaties and treaty bodies

56. The Committee continues to find value in the meeting of persons chairing the human rights treaty bodies as a forum for the exchange of ideas and information on procedures and logistical problems, particularly the need for sufficient services to enable the various treaty bodies to carry out their respective mandates.

57. Mr. Bhagwati, the Chairperson of the Committee, participated in the 13th meeting of treaty body chairpersons, held in Geneva from 18 to 22 June 2001. The outcome of the 13th meeting was discussed at the seventy-second session. Among the matters discussed were:

(a) The issue of staff resources;

(b) The issue of better coordination of activities among treaty bodies and with the special procedures mechanisms of the Commission on Human Rights;

(c) The issue of follow-up to concluding observations on initial or periodic State party reports;

(d) The desirability of an inter-Committee meeting;

(e) The future of the Global Plan of Action for the strengthening of the United Nations human rights treaty body system.

58. In their recommendations, the Chairpersons:

(a) Recommended that the practice of holding an informal meeting with representatives of States parties should be continued at the fourteenth meeting, in 2002;

(b) Recommended that treaty body chairpersons should attend meetings of the United Nations organs to which their reports are submitted at the time that their reports are being considered. They requested the Office of the High Commissioner to provide funding to implement that decision;

(c) Agreed that a first inter-Committee meeting be convened on the subjects of methods of work and reservations to the human rights treaties. The secretariat was requested to organize a four-day meeting. Each Committee should, as far as possible, be represented by its Chairperson and two other members;

(d) Recommended that all the treaty bodies should consider ways of strengthening collaboration with the Sub-Commission for the Promotion and Protection of Human Rights;

(e) Reaffirmed the need for improving collaboration and the exchange of information between treaty bodies and the special procedures mandates of the Commission on Human Rights. The following recommendations to this effect, were made, inter alia:

- Efforts must be made to ensure the periodic distribution, to all members of treaty bodies and special procedures mandate holders of a list of planned country visits of special procedures mandate holders and the schedule of consideration of reports of States parties to the major human rights treaties;

- Efforts should be made to disseminate more widely the expertise accumulated in the jurisprudence and other work of the treaty bodies and special procedures mandate holders;

– Increased emphasis should be placed on organizing meetings between special procedures mandate holders and the treaty bodies. Advantage should be taken of the presence of special procedures mandate holders in Geneva during a treaty body session.

(f) Lastly, the Chairpersons agreed that the next joint meeting with special procedures mandate holders, in June 2002, should be devoted in part to a joint discussion of the role of the human rights mechanisms in the follow-up to the World Conference against Racism.

### D. Cooperation with other United Nations bodies

59. In 1999, the Committee considered its participation in the initiative emerging from the Memorandum of Understanding signed by the Office of the High Commissioner for Human Rights and the United Nations Development Programme on cooperation over a wide range of human rights issues and activities. The Committee welcomed the fact that, in its development programmes, and in particular those relating to technical assistance, the United Nations Development Programme (UNDP) took account of the Committee's conclusions arising from its consideration of State party reports. While the indicators, i.e. quantitative and qualitative criteria for assessing compliance by States parties with the provisions of human rights treaties and for a State party's capacity for good governance, did not as yet include many rights guaranteed by the International Covenant on Civil and Political Rights, the Committee intended to play its part in refining and developing those indicators, so that United Nations resources may be more effectively targeted.

60. On 2 April 2001, the Chairperson of the Committee, Mr. Bhagwati, addressed a letter to the Administrator of UNDP, reiterating his request for continued UNDP contribution to the elaboration of lists of issues on initial and/or periodic State party reports.

61. From 25 to 27 June 2001, Mr. Bhagwati and Ms. Medina Quiroga participated in the International Workshop on the Application of Human Rights to Reproductive and Sexual Health, organized jointly by the Office of the High Commissioner for Human Rights and the United Nations Population Fund, in Geneva. Mr. Bhagwati and Ms. Medina Quiroga briefed the Committee on the conduct and recommendations of the Workshop during the seventy-second session.

## CHAPTER III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

62. Under article 2, paragraph 1, of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. In connection with this provision, article 40, paragraph 1, of the Covenant requires States parties to submit reports on the measures adopted and the progress achieved in the enjoyment of the various rights and on any factors and difficulties that may affect the implementation of the Covenant. States parties undertake to submit reports within one year of the entry into force of the Covenant for the State party concerned and, thereafter whenever the Committee so requests. Under the Committee's current guidelines, adopted at the sixty-sixth session and amended at the seventieth session (CCPR/C/GUI/66/Rev.2), the five-year periodicity in reporting, which the Committee had established at its thirteenth session in July 1981 (see CCPR/C/19/Rev.1), has now been replaced by a more flexible system whereby the date for the submission by a State party of its subsequent periodic report is set on a case-by-case basis at the end of the Committee's concluding observations on any report under article 40. This system has been applied to all reports examined during the Committee's seventy-first and seventy-second sessions.

### A. Reports submitted to the Secretary-General from August 2000 to July 2001

63. During the period covered by the present report, eight initial or periodic reports were submitted to the Secretary-General: one initial report was submitted by the Republic of Moldova; two second periodic reports were submitted, by Viet Nam and Georgia; two third periodic reports were submitted, by Togo and Yemen; two fourth periodic reports were submitted, by New Zealand and Hungary; and one fifth periodic report was submitted by Sweden.

### B. Overdue reports and non-compliance by States parties with their obligations under article 40

64. States parties to the Covenant must submit the reports referred to in article 40 of the Covenant on time so that the Committee can duly perform its functions under that article. Those reports are the basis for the discussion between the Committee and States parties on the human rights situation in States parties. Regrettably, serious delays have been noted since the establishment of the Committee.

65. The Committee is faced not only with a problem of overdue reports, but also with a backlog of reports already received but not yet considered, which has continued to grow notwithstanding the Committee's new guidelines and other significant improvements in the Committee's working methods. With a view to reducing this backlog, the Committee has decided to consider some periodic reports together even if they were issued as separate documents. It did so in July 2000 for the third and fourth periodic reports of Australia. In the same vein and for the same reason, the Committee has accepted the submission of periodic reports which combined two overdue reports in a single document. It did so for the combined third and fourth report of Trinidad and Tobago, which was considered in October 2000. The

Committee does not encourage the practice of States parties' merging overdue reports. However, with the adoption of the new guidelines, the date for the submission of the next periodic report is stated in the concluding observations; it remains premature to evaluate compliance with this requirement.

66. The Committee notes with concern that the failure of States to submit reports hinders the Committee in the performance of its monitoring functions under article 40 of the Covenant. The Committee lists below the States parties that have a report more than five years overdue, as well as those that have not submitted reports requested by a special decision of the Committee. The Committee reiterates that those States are in serious default of their obligations under article 40 of the Covenant.

**States parties that have reports more than five years overdue (as of 27 July 2001) or that have not submitted a report requested by a special decision of the Committee**

| State party | Type of report | Date due | Years overdue |
|---|---|---|---|
| Gambia | Second | 21 June 1985 | 16 |
| Suriname | Second | 2 August 1985 | 15 |
| Kenya | Second | 11 April 1986 | 15 |
| Mali | Second | 11 April 1986 | 15 |
| Equatorial Guinea | Initial | 24 December 1988 | 12 |
| Central African Republic | Second | 9 April 1989 | 12 |
| Barbados | Third | 11 April 1991 | 10 |
| Somalia | Initial | 23 April 1991 | 10 |
| Nicaragua | Third | 11 June 1991 | 10 |
| Democratic Republic of the Congo | Third | 31 July 1991 | 9 |
| Portugal | Third | 1 August 1991 | 9 |
| Saint Vincent and the Grenadines | Second | 31 October 1991 | 9 |
| San Marino | Second | 17 January 1992 | 9 |
| Panama | Third | 31 March 1992 | 9 |
| Rwanda | Third | 10 April 1992 | 9 |
| Madagascar | Third | 31 July 1992 | 8 |
| Grenada | Initial | 5 December 1992 | 8 |
| Albania | Initial | 3 January 1993 | 8 |
| Philippines | Second | 22 January 1993 | 8 |
| Bosnia and Herzegovina | Initial | 5 March 1993 | 8 |
| Benin | Initial | 11 June 1993 | 8 |
| Côte d'Ivoire | Initial | 25 June 1993 | 8 |
| Seychelles | Initial | 4 August 1993 | 7 |
| Mauritius | Fourth | 4 November 1993 | 7 |
| Angola | Initial/Special | 31 January 1994 | 7 |
| Niger | Second | 31 March 1994 | 7 |
| Afghanistan | Third | 23 April 1994 | 7 |
| Ethiopia | Initial | 10 September 1994 | 6 |
| Dominica | Initial | 16 September 1994 | 6 |
| Guinea | Third | 30 September 1994 | 6 |

| State party | Type of report | Date due | Years overdue |
|---|---|---|---|
| Mozambique | Initial | 20 October 1994 | 6 |
| Cape Verde | Initial | 5 November 1994 | 6 |
| Luxembourg | Third | 17 November 1994 | 6 |
| Bulgaria | Third | 31 December 1994 | 6 |
| Egypt | Third | 31 December 1994 | 6 |
| Islamic Republic of Iran | Third | 31 December 1994 | 6 |
| Malawi | Initial | 21 March 1995 | 6 |
| El Salvador | Third | 31 December 1995 | 5 |
| Namibia | Initial | 27 February 1996 | 5 |

67. The Committee once again draws particular attention to the fact that 28 initial reports have not yet been presented (including the 15 overdue initial reports listed above). This situation frustrates a major objective of ratifying the Covenant, which is to submit regular reports on compliance with it to the Committee. There has been no opportunity even to commence a discussion of the human rights situation in the States concerned.

68. In the period under review, two States parties (Uzbekistan and the Federal Republic of Yugoslavia) whose reports were listed for consideration at the seventieth and seventy-first sessions respectively, notified the Committee shortly before the scheduled consideration of their respective report that they could not send a delegation on the scheduled date and asked for a postponement. The Committee expresses its concern at this failure of States to cooperate in the reporting process and especially their withdrawal at a late stage; such conduct aggravates the problem of the backlog in the examination of reports, since it is impossible for the Committee to schedule at short notice the examination of any other report. In the case of Uzbekistan, the Committee was able to reschedule consideration of the initial report from the seventieth to the seventy-first session, but could not examine another State party's report during the seventieth session. Similarly, after the withdrawal of the Federal Republic of Yugoslavia prior to the seventy-first session, the Committee could not, at short notice, schedule another State party's report for consideration during the seventy-first session.

69. The amended rules of procedure now enable the Committee to consider compliance by States parties which have failed to submit reports under article 40 or which have requested a postponement of their scheduled appearance before the Committee (see chap. II, para. 54).

70. At its 1860th meeting on 24 July 2000, the Committee decided that Kazakhstan should be requested to present its initial report by 31 July 2001, notwithstanding the fact that no instrument of succession or accession has been received from Kazakhstan following its independence. By the time of the adoption of the present report, the initial report of Kazakhstan had not been received.

## CHAPTER IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

71. The following sections, arranged on a country-by-country basis in the sequence followed by the Committee in its consideration of the reports, contain the concluding observations adopted by the Committee with respect to the States parties' reports considered at its seventieth, seventy-first and seventy-second sessions. The Committee urges States parties to adopt corrective measures consistent with their obligations under the Covenant and to implement these recommendations.

### 72. Trinidad and Tobago

(1) The Committee considered the joint third and fourth periodic reports of Trinidad and Tobago (CCPR/C/TTO/99/3) at its 1870th and 1871st meetings, on 17 October 2000, and subsequently adopted its concluding observations and recommendations at its 1891st meeting, on 31 October.

#### Introduction

(2) The Committee regrets the delay in submission of these reports, but welcomes the information set out in the report and the accompanying material. Supplementary written answers were received in time for them to be considered by the Committee.

#### Positive aspects

(3) The Committee welcomes the setting up, in the Ministry of the Attorney-General and Legal Affairs, of a Human Rights Unit, its activities in clearing the backlog in reporting under the Covenant and the human rights treaties, and its other initiatives to improve the protection for human rights.

(4) The Committee commends improvements to the remedies provided in cases of domestic violence, together with specialized personnel now available to assist victims, including the Domestic Violence Unit set up by the Ministry of Culture and Gender Affairs.

(5) The Committee takes note with satisfaction of the institution of the independent Police Complaints Authority and looks forward to rapid proclamation of the Act extending its powers.

(6) The extension of legal aid, both in terms of geographical distribution and of the tribunals before which it is available, as well as raising of fees so as to attract higher quality advocates, increases compliance with article 14.3 (d).

#### Concerns and recommendations

(7) The Committee places on record its profound regret at the denunciation of the Optional Protocol. In the light of the continued existence of the death penalty, and despite assurances by the delegation that proposals to extend the death penalty have been rejected, it recommends that:

(a) In relation to all persons accused of capital offences the State party should ensure that every requirement of article 6 is strictly complied with;

(b) In the event of reclassification of murder being brought into effect for persons thereafter tried and convicted, those already convicted of murder should be entitled to similar reclassification, in accordance with article 15.1; and

(c) The assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases carrying the death penalty.

(8) Upon ratifying the Covenant, the State party accepted obligations under articles 2.1 and 2.2 to ensure that all individuals subject to its jurisdiction should enjoy Covenant rights; and, insofar as not already in place, to take the necessary steps to adopt measures to give effect to those rights.

The State party may not rely on limitations in its Constitution as grounds for non-compliance with the Covenant but should put in place the necessary laws to achieve such compliance.

(9) The Committee is concerned that a thorough review of domestic law, to ensure compliance with the Covenant norms, has not yet been completed.

The State party should, for example, align the limitations imposed by article 4 of the Covenant with domestic measures to be taken in cases of public emergency, so as to:

(a) Comply with the categorization of an emergency that it must threaten the "life of the nation";

(b) Respect the prohibition on derogation contained in article 4.2; the State party should establish that measures permitted under emergency powers are so compatible;

(c) Ensure that any derogations from the State party's obligations under the Covenant do not exceed those strictly required by the exigencies of the situation.

(10) The Committee is concerned at the lack of remedies under domestic legislation, including the Constitution, for victims of discrimination within the full ambit of articles 2.3 and 26 of the Covenant.

The State party should ensure that remedies are available for the full range of discriminatory situations falling within the protection given by those articles, and should include in its next report information on the extent to which this has been achieved.

(11) The Committee urges that priority be given to all necessary preparations, so as to bring into force by proclamation at the earliest possible date the Equal Opportunities Act 2000, particularly in respect to the advancement of women.

The State should, thereafter, introduce amending legislation to extend the provisions of the Act to those suffering discrimination on grounds of age, sexual orientation, pregnancy or infection with HIV/AIDS.

(12) In relation to sexual harassment in the workplace, the Committee notes the judicial decision in Bank Employees' Union v. Republic Banks Ltd., Trade Dispute 17 of 1995, where it was held that a person had been properly dismissed from his employment where his conduct, on the facts of the case, was properly classified as sexual harassment.

The adequacy of judicial remedy should be kept under review and legislation passed if necessary.

(13) The Committee is disturbed to learn that, apart from prohibiting corporal punishment for persons under 18 years of age, the State party is still practising the punishments of flogging and whipping, which are cruel and inhuman punishments prohibited by article 7.

Sentences of flogging or whipping should immediately be abolished.

(14) The Committee regrets that problems relating to the police force (such as corruption, brutality, abuse of power and obstacles placed in the way of police personnel who seek to correct such practices), identified over the last decade, have still not been rectified. It is concerned that there is little reduction in the numbers of complaints of harassment and battery submitted in 1999 and 2000.

The Plan of Action now in preparation should reinforce reforms already made and ensure that the culture of the force genuinely becomes one of public service; dereliction of duty, harassment and battery (among other things) by police officers should be the subject of swift disciplinary or criminal proceedings (arts. 2.1, 2.2. and 7).

(15) The Committee supports the expressed concern of the Trinidad and Tobago Police Complaints Authority about the inadequacy of reports from the Police Complaints Division and failure of that Division adequately to report on continuing complaints in important categories.

The Complaints Division should improve the contents of its reports and accelerate its reporting process so as to enable the Police Complaints Authority thoroughly to fulfil its statutory functions, and so that violations of articles 7 and 9.1 may be properly investigated.

(16) The Committee is concerned about chapter 15.01 of the Police Act which enables any policemen to arrest persons without a warrant in a large number of circumstances. Such a vague formulation of the circumstances in the Act gives too generous an opportunity to the police to exercise this power.

The Committee recommends that the State party confine its legislation so as to conform to article 9.1 of the Covenant.

(17) The Committee expresses its concern over prison conditions; whilst accepting that the opening of and phased introduction of prisoners into the new maximum security prison, together with the impact of non-custodial sentences, will reduce the population held in out-dated establishments, the conditions in these establishments are incompatible with article 10.

The new Commission's report on giving effect to the Standard Minimum Rules for the Treatment of Prisoners should be given priority as to its publication and implementation.

(18) The Committee recommends that legal limitations on abortion be reappraised and that restrictions which may risk violation of women's rights be removed from the law, by legislation if necessary (arts. 3, 6.1 and 7).

(19) The Committee is concerned that the existing laws on defamation could be used to restrict criticism of Government or public officials.

The State party should proceed with its proposals to reform the law of defamation, ensuring a due balance between protection of reputation and freedom of expression (art. 19).

(20) The Committee has long awaited information on follow-up of its views as pressed in response to communications.

Complete replies should be given as to the grant of remedies as recommended by the Committee, in full compliance with article 4.2 of the Optional Protocol.

(21) The Committee requests that the fifth periodic report be submitted by 31 October 2003. It requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in the State party.

73. **Denmark**

(1) The Committee considered the fourth periodic report of Denmark (CCPR/C/DNK/99/4) at its 1876th and 1877th meetings (see CCPR/C/SR.1876, 1877) held on 20 October 2000, and adopted the following concluding observations at its 1888th meeting (see CCPR/C/SR.1888), held on 30 October 2000.

**Introduction**

(2) The Committee welcomes the timely submission of the State party's fourth periodic report, and its detailed information on laws, practices and measures taken, relating to the implementation of the Covenant. The Committee commends the State party on the thoroughness of the report, on following the Committee's guidelines on reporting, and on addressing the Committee's concerns expressed in the previous concluding observations (CCPR/C/79/Add.68).

**Positive aspects**

(3) The Committee commends Denmark for maintaining a high level of respect for human rights generally and its obligations under the Covenant.

(4) The Committee welcomes Denmark's efforts to educate its population, and in particular to train the police, in human rights. The Committee appreciates that, following its third periodic report, Denmark has changed the rules and practices on the use of police dogs in crowd control.

(5) The Committee notes with appreciation Denmark's new rules on examination of complaints concerning the police, and will welcome information on the results of the new procedures in Denmark's next periodic report. (article 9 of the Covenant)

(6) The Committee notes the high level of respect for gender equality in Denmark, and the measures taken to achieve full equality where it has remained deficient. (article 3 of the Covenant)

(7) The Committee commends Denmark for developments in providing legal training in Greenland, in promoting Greenland's financial independence, and in supporting Greenland Houses in Denmark. The Committee will welcome further information in these respects in Denmark's fifth periodic report. The Committee also welcomes Denmark's initiative in translating the Covenant into Greenlandic. (article 27 of the Covenant)

(8) The Committee welcomes the amendment of the Danish Criminal Code to prohibit advocacy of national or racial hatred. (article 20 of the Covenant)

**Principal subjects of concern and recommendations**

(9) The Committee is concerned to assure the full protection in Denmark of individual rights under the Covenant. The Committee notes that Denmark has set up a body to consider the incorporation into domestic law of several human rights treaties, including the Covenant (CCPR/C/79/Add.68, para.11).

> The State party should take any steps necessary to assure that all rights under the Covenant secure full protection in Danish law. It should inform the Committee on the measures taken and on the success of such measures.

(10) The Committee continues to be disappointed that Denmark has not decided to withdraw any of the reservations entered at its ratification of the Covenant.

> Denmark should continue to consider withdrawal of some or all of the reservations (CCPR/C/79/Add.68, para.12).

(11) The Committee regrets the delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights on account of the construction of the military base at Thule (CCPR/C/79/Add.68, para.15). The Committee is concerned over reports that the alleged

victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements; the Committee wishes to be informed on this matter.

The Committee notes the Danish delegation's undertaking to provide information on the outcome of the Thule case (articles 2 and 27 of the Covenant).

(12) The Committee is concerned that it has not received further information on the implementation of the Covenant in the Faeroe Islands (CCPR/C/79/Add.68, para.16).

The State party should include such information in its next report. It should also inform the Committee concerning the implementation of the right of self-determination for the population of the Faeroe Islands (article 1 of the Covenant).

(13) The Committee is particularly concerned about the extended use of solitary confinement for persons incarcerated following conviction, and especially for those detained prior to trial and conviction. The Committee is of the view that solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant.

Denmark should reconsider the practice of solitary confinement so as to assure that it is imposed only in cases of urgent need.

(14) The Committee is concerned to assure that persons whose rights under the Covenant are violated have an effective remedy in all cases.

Denmark should ensure, in particular, that, in order to secure the victim's right to a remedy the Covenant may be invoked before Danish authorities and courts (article 2 of the Covenant).

(15) Issues of equality and non-discrimination (articles 3 and 26 of the Covenant).

(a) The Committee expresses concern that, despite continuing efforts by the State party, as noted in paragraph (5) above, there remain areas of discrimination against women, notably in respect of employment in the public and private sectors, and in applications for asylum.

Denmark should provide information on measures taken to address these matters in its next report.

(b) The Committee is concerned about reports of discrimination against ethnic minorities.

Denmark should ensure equality of treatment for ethnic minorities. In particular, in view of information that there continue to be occurrences of racial discrimination, for instance, in restaurants and night-clubs, the Committee recommends that measures be taken to prevent such discrimination. It requests further information on these matters.

(c) Denmark should provide additional information with respect to equality between National Church members and members of other religions, and between members of religions and non-believers, in respect of financial subventions, educational costs, and special taxes.

(16) The Committee notes that, under the Aliens Act, article 40 (c), the Immigration Authorities may require DNA examination from the applicant and from persons with whom the applicant claims the family ties on which a residence permit is to be based.

DNA testing may have important implications for the right of privacy under article 17 of the Covenant. Denmark should ensure that such testing is used only when necessary and appropriate to the determination of the family tie on which a residence permit is based (article 23 of the Covenant).

(17) The Committee notes that asylum-seekers in Denmark are often restricted or discouraged from choosing residence in specific municipalities or from moving from one municipality to another.

Denmark should ensure that any such measures, as applied, are in strict compliance with article 12 of the Covenant.

(18) The Committee notes that asylum seekers are entitled to have the assistance of legal counsel, but the State party should provide information as to the stages of the application procedures at which legal assistance may be had, and whether the assistance is free of charge at all stages for those who cannot afford it (article 13 of the Covenant).

**Dissemination of information about the Covenant (art. 2)**

(19) Denmark's fifth periodic report should be submitted by 31 October 2005. That report should be prepared in accordance with the revised Guidelines adopted by the Committee (CCPR/C/66/GUI/Rev.1), and should give particular attention to the issues raised in these concluding observations. These concluding observations and the next periodic report should be widely disseminated in Denmark.

74. **Argentina**

(1) The Committee examined the third periodic report of Argentina (CCPR/C/ARG/98/3) at its 1883rd and 1884th meetings, held on 25 and 26 October 2000. At its 1893rd meeting on 1 November 2000, the Committee adopted the following concluding observations.

**Introduction**

(2) The Committee welcomes the frank and constructive elaboration by the delegation of measures undertaken by the State party, since the presentation of its second periodic report, to ensure respect for rights guaranteed by the Covenant. It also appreciates the additional information provided orally by the delegation during the examination of the report and in response to members' questions.

(3) The Committee observes that the federal system of government in the State party entails provincial involvement in the implementation of many of the rights provided for in the Covenant, and that it therefore requires additional information on the laws and measures undertaken at the provincial level, in order to assess progress in ensuring Covenant rights, in accordance with article 50 of the Covenant.

**Positive aspects**

(4) The Committee welcomes the consolidation of democratic processes and measures taken to promote national reconciliation following the years of military rule when many basic human rights were flagrantly violated. In this regard, the Committee notes with satisfaction the operation of a number of institutions and programmes designed to serve as a channel of redress for victims of past abuses, inter alia the Historical Reparation Programme, the National Commission on the Disappearance of Persons, and the National Commission for the Right to an Identity. The Committee also appreciates the efforts being made to provide financial and other compensation to victims of arbitrary detention and the families of persons who died or disappeared under the military regime.

(5) The Committee welcomes recent developments in which some of those responsible for the most serious violations of human rights, including forced disappearances, torture, and removal of children from their parents for purposes of illegal adoption or trafficking, are being brought to trial. It particularly welcomes the establishment of a mechanism, without time restriction on its activities, to restore the identities of children who were forcibly removed from their families.

(6) The Committee is pleased to note the recent reforms enacted to promote the independence of the judiciary, particularly the creation of a competitive selection process for judges.

(7) The Committee also notes with satisfaction the advances made in the protection of the rights of the indigenous peoples, the devolution of national and provincial land to indigenous communities through the National Registry of Indigenous Communities, and the promotion of multicultural and multilingual education.

**Principal subjects of concern and recommendations**

(8) The Committee is concerned at the continuing uncertainty over the status of Covenant rights in national law. Despite assurances that the Covenant has constitutional status and is therefore directly invocable in courts, the Committee notes that it has been further described by the State party as being applied in a manner which is "complementary" to the Constitution, without further precision concerning that term. It also notes that the federal system of government confers upon the provinces responsibilities in critical areas, such as the administration of justice, which has resulted in uneven application of the Covenant in different areas of the State party's territory.

The Committee, recalling the responsibility of the State party itself with regard to implementation of obligations under the Covenant, recommends that clarification of the status of Covenant rights be included in the fourth periodic report, including any specific examples of cases where Covenant rights have been invoked in the courts. The next report should also contain information on the legal and other measures taken to implement the Covenant at the provincial level to ensure that all persons are able to enjoy their rights throughout the territory of the State party.

(9) Despite positive measures taken recently to overcome past injustices, including the repeal in 1998 of the Law of Due Obedience and the Punto Final Law, the Committee is concerned that many persons whose actions were covered by these laws continue to serve in the military or in public office, with some having enjoyed promotions in the ensuing years. It therefore reiterates its concern at the atmosphere of impunity for those responsible for gross human rights violations under military rule.

Gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary, to bring to justice their perpetrators. The Committee recommends that rigorous efforts continue to be made in this area, and that measures be taken to ensure that persons involved in gross human rights violations are removed from military or public service.

(10) In the light of articles 9 and 14 of the Covenant, the Committee reiterates its deep concern at the failure of the State party fully to ensure the principle of presumption of innocence in criminal proceedings. In this respect, the Committee considers it a matter of concern that the duration of such detention is determined by reference to the possible length of sentence following conviction rather than the need to bring the detainee before the courts. It stresses in this regard that the imposition of pre-trial detention should not be the norm but should be resorted to only as an exceptional measure to the extent necessary and consistent with due process of law and article 9 (3) of the Covenant. In this regard, there should not be any offences for which pre-trial detention is obligatory.

All aspects of the system of pre-trial detention, including the determination of the length of detention, should be reformed in accordance with the requirements of article 9 and the principle of presumption of innocence under article 14.

(11) The Committee is deeply concerned that prison conditions fail to meet the requirements of articles 7 and 10 of the Covenant. It considers the severe overcrowding and the poor quality of basic necessities and services, including food, clothing and medical care, to be incompatible with the right to be treated with humanity and with respect for the inherent dignity of the human person to which all persons are entitled. It has been established, in addition, that there are abuses of authority by prison officials, such as torture and ill-treatment, and corruption.

While noting the plans under way to construct new prison facilities, the Committee recommends that immediate attention be paid to the need to provide adequately for the basic necessities of all persons deprived of their liberty. With respect to complaints of ill-treatment or torture, it recommends that the State party include in its next report detailed information on the number of complaints received, including the recourse procedures that are available to complainants, the outcome of complaints to date, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

(12) Further in relation to article 7 of the Covenant, the Committee regrets that questions of torture and excessive use of force by police officials were not adequately dealt with in the present report. The Committee is concerned at allegations it has received indicating that this is a widespread problem and that Government mechanisms established to address it are inadequate.

The Committee recommends that the State party include in its next report detailed information on the number of complaints received of torture and ill-treatment by the police, including the recourse procedures and remedies that are available to complainants, the outcomes of such complaints, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

(13) The Committee expresses concern over continuing attacks on human rights defenders, judges, complainants and representatives of human rights organizations, and members of the media. In addition, persons who participate in peaceful demonstrations are reportedly subject to detention and penal action.

Attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required. The State party should provide details in its next report on the results of such investigations and the procedures involved in disciplining or punishing offenders.

(14) On the issue of reproductive health rights, the Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law, inter alia when there are clear health risks for the mother or when pregnancy results from rape of mentally disabled women. The Committee also expresses concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women.

The Committee recommends that the State party take measures to give effect to the Reproductive Health and Responsible Procreation Act of July 2000, by which family planning counselling and contraceptives are to be provided, in order to grant women real alternatives. It further recommends that the laws and policies with regard to family planning be reviewed on a regular basis. Women should be given access to family planning methods and sterilization procedures; and in cases where abortion procedures may lawfully be performed, all obstacles to obtaining them should be removed. Argentine law should be amended to permit abortions in all cases of pregnancy caused by rape.

(15) With regard to article 3 of the Covenant, the Committee is concerned that, despite significant advances, traditional attitudes toward women continue to exercise a negative influence on their enjoyment of Covenant rights. The Committee is particularly concerned at the high incidence of violence against women, including rape and domestic violence. Sexual harassment and other manifestations of discrimination in both the public and private sectors are also a matter of concern. The Committee notes as well that information on these matters is not systematically maintained, that women have a low awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with.

The Committee recommends that a large-scale information campaign be undertaken to promote awareness among women of their rights and the remedies available to them. It urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms, and provided in the next periodic report.

(16) The Committee reiterates its concern that the preferential treatment, including financial subsidies, accorded to the Catholic Church as against other religious denominations constitutes religious discrimination under article 26 of the Covenant.

(17) The Committee requests that the fourth periodic report be submitted by 31 October 2005. It also requests that appropriate disaggregated statistics on major areas of concern be provided in the report. The Committee further requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in the State party.

75. **Gabon**

(1) The Committee considered the second periodic report of Gabon (CCPR/C/128/Add.1) at its 1886th and 1887th meetings on 27 October 2000 (CCPR/C/SR.1886 and 1887), and adopted the following concluding observations at its 1894th meeting, held on 2 November 2000 (CCPR/C/SR.1894).

**Introduction**

(2) The Committee found the introduction to the second periodic report of Gabon and the additional written material interesting. It is thankful that the report was submitted on time and notes the efforts made by the State party delegation to answer the Committee's questions. It

regrets, however, that the report is so brief, offering some information on Gabonese legislation, but no specific details on the implementation of the Covenant. It emphasizes that the State party has not followed the guidelines for the submission of reports or taken account of the concerns the Committee expressed in its concluding observations following the consideration of the initial report (CCPR/C/31/Add.4).

**Positive aspects**

(3) The Committee welcomes Gabon's shift towards a multi-party, pluralistic democracy, particularly since the amendments to the Constitution in 1994 and 1997.

(4) It notes with satisfaction that the Covenant is directly applicable in Gabon.

(5) The Committee is pleased that individuals may submit appeals directly to the Constitutional Court, which could additionally strengthen the remedies available to them in the event of violations of the Covenant.

(6) The Committee takes note of the establishment of a ministry with responsibility for human rights and of a 14-member national human rights commission as an official body to promote and protect human rights with jurisdiction to consider applications from individuals. It welcomes the creation of an inter-ministerial commission to identify and remove discriminatory legislative provisions, particularly with regard to women.

(7) It notes that the police is no longer a part of the Armed Forces and no longer comes under the authority of the military command in the Ministry of Defence.

**Principal subjects of concern and recommendations**

(8) The Committee reiterates the concern expressed in its 1996 concluding observations that the non-discrimination clauses contained in articles 2, 3 and 26 of the Covenant are not fully reflected in the Constitution.

(9) The Committee notes that there are customs and traditions in the State party, having a bearing on, among other things, equality between men and women, that may hamper the full implementation of some provisions of the Covenant. In particular, the Committee deplores the fact that polygamy is still practised in Gabon and refers to its General Comment No. 28, which states that polygamy is incompatible with equality of treatment with regard to the right to marry. "Polygamy violates the dignity of women. It is an inadmissible discrimination against women" (CCPR/C/21/Rev.1/Add.10, para. 24). The Committee also observes that a number of legislative provisions in Gabon are not compatible with the Covenant, including article 252 of the Civil Code requiring a woman to be obedient to her husband. Lastly, the Committee notes that, in the event of her husband's death, a woman inherits only the usufruct of a quarter of the property left by her husband, and only after her children.

The State party must review its legislation and practice in order to ensure that women have the same rights as men, including rights of ownership and inheritance. It must take specific action to increase the involvement of women in political, economic and social

life and ensure that there is no discrimination based on customary law in matters such as marriage, divorce and inheritance. Polygamy must be abolished and article 252 of the Civil Code repealed. It is the duty of the State party to do everything necessary to ensure that the Covenant is respected.

(10) The Committee notes the lack of information concerning article 4, paragraph 2, of the Covenant; it is concerned about the lack of safeguards and effective remedies available to individuals during a state of emergency.

The Committee invites the State party to clarify the rights of the Covenant affected by the various types of state of emergency. Gabon should establish effective remedies in legislation that are applicable during a state of emergency.

(11) The Committee notes that the State Security Court is still in existence even if it is not functioning.

The Committee invites Gabon to abolish the State Security Court.

(12) The Committee notes the State party's declared policy of not applying the death penalty, and that no one has been executed since 1981.

The Committee invites the State party to take the required steps to accede to the Second Optional Protocol to the Covenant on the abolition of the death penalty.

(13) The Committee notes that the safeguards provided for in article 9 of the Covenant are not fully respected either in law or in practice. It is particularly concerned about the length of time people can spend in police custody and pre-trial detention. It points out that article 9, paragraph 3, of the Covenant stipulates that "It shall not be the general rule that persons awaiting trial shall be detained in custody".

The State party should take action to ensure that detention in police custody never lasts longer than 48 hours and that detainees have access to lawyers from the moment of their detention. The State party must ensure full de facto compliance with the provisions of article 9, paragraph 3, of the Covenant.

(14) The Committee notes the delegation's statement that, in prison, detainees are segregated, accused persons being kept separate from convicted persons and juveniles from adults. It is, however, concerned to learn that such segregation is still not practised in some rural prisons. Although, since the consideration of the previous report, Gabon has made efforts to restructure its prisons and has built two new ones, the Committee is still concerned about the dilapidated state of the old prisons, the overcrowding and the lack of hygiene.

The State party must bring prison conditions into line with article 10 of the Covenant and the Standard Minimum Rules for the Treatment of Prisoners, making those rules available to the police, the Armed Forces, prison staff and anyone else responsible for conducting interrogations, as well as to persons deprived of their liberty.

(15) The Committee reiterates its concern about the practice of putting people in prison for civil debts, which is in breach of article 11 of the Covenant.

The State party must abolish imprisonment for debt.

(16) As regards the rights of non-Gabonese citizens and refugees living in Gabon, the Committee notes that foreign workers are still required to have exit visas, in contravention of article 12 of the Covenant.

The State party must do away with this requirement.

(17) The Committee is concerned to note that the State party denies the existence of minorities in its territory. The Committee is concerned to note that the steps taken to guarantee the rights of people belonging to minorities, as set forth in article 27 of the Covenant, are inadequate, particularly with regard to the Baka people.

The State party must take positive, effective steps to guarantee the rights of people belonging to all minorities.

(18) The Committee is concerned about the exploitation of children, including foreign children. It notes that the Libreville Conference in February 2000 showed this to be a veritable scourge.

The State party must take all necessary steps to ensure that children enjoy special protection, in accordance with its obligations under article 24 of the Covenant.

(19) The Committee notes with regret that the powers vested in the National Council of Communication to monitor programmes and impose penalties on organs of the press are an obstacle to the exercise of freedom of the press. It deplores the harassment of journalists.

The Committee invites the State party to bring its legislation into line with article 19 by doing away with censorship and penalties against organs of the press and ensuring that journalists may safely exercise their functions.

**Dissemination of information about the Covenant**

(20) The Committee has scheduled the submission of the third periodic report for 31 October 2003. This report should be prepared in accordance with the Committee's revised guidelines, provide gender disaggregated data and up-to-date statistics on the status of women and give particular prominence to the recommendations made in these concluding observations. The Committee requests that these concluding observations and the next periodic report should be widely circulated to the general public, including civil society and non-governmental organizations active in Gabon.

76. **Peru**

(1) The Committee considered the fourth periodic report of Peru (CCPR/C/PER/98/4), at its 1879th, 1880th and 1881st meetings, held on 23 and 24 October 2000 and, at the 1892nd meeting, held on 1 November 2000, adopted the following concluding observations.

**Introduction**

(2) The Committee welcomes with satisfaction the fourth periodic report submitted by the State party, as well as the comments on the concluding observations and recommendations of the Committee on the third periodic report (CCPR/C/83/Add.4). It also appreciates the delegation's willingness to establish a dialogue with it. However, it regrets the fact that the report does not contain relevant statistical data and does not deal adequately with the difficulties the State party encounters in implementing the Covenant.

**Positive aspects**

(3) The Committee welcomed the announcement of the holding of early presidential elections in 2001 and hopes that they will take place in an atmosphere of transparency and freedom, in accordance with international standards.

(4) The Committee welcomes with satisfaction the fact that "faceless" courts have been abolished as the Committee recommended (CCPR/C/79/Add.67); the fact that the offence of terrorism has been transferred from the jurisdiction of the military courts to that of the ordinary criminal courts; and the fact that the state of emergency affecting areas of the national territory has been rescinded.

(5) The Committee regards it as a positive sign that, under Act No. 26,926 of 21 February 1998, torture has been characterized as an offence in the chapter of the Penal Code on crimes against humanity.

(6) In the Committee's opinion, another favourable development is that machinery has been established for the protection of women, such as the Office of the Ombudsman Specializing in Women's Rights within the Ombudsman's Office and the Congressional Commission on Women and Human Development. The Committee also expresses its satisfaction with the adoption of civil and criminal legislation recognizing the rights of women.

**Principal subjects of concern and recommendations**

(7) The Committee again regrets the fact that Peru has not taken account of the recommendations made following the consideration of the third periodic report (CCPR/C/79/Add.67, paras. 20-26 and CCPR/C/79/Add.72, paras. 19-25). Many of the subjects of concern referred to at that time continue to be matters of concern at present.

(8) The Committee considers that, despite transitional provision 4 of the Constitution of Peru stating that the rules relating to the rights and freedoms which the Constitution recognizes are interpreted in accordance with the International Covenant on Civil and Political Rights and other relevant treaties ratified by Peru, the rank of the Covenant in the internal legal system is not clear and the rights recognized in it do not appear to be respected.

The Committee recommends that the necessary legal measures should be taken to guarantee the rights recognized in the Covenant, in accordance with article 2, paragraph 1, of the Covenant.

(9) The Committee deplores the fact that its recommendations on the 1995 amnesty laws have not been followed and reiterates that these laws are an obstacle to the investigation and punishment of the persons responsible for offences committed in the past, contrary to article 2 of the Covenant. The Committee is deeply concerned about recent information stating that the Government is sponsoring a new general amnesty act as a prerequisite for the holding of elections.

The Committee again recommends that the State party should review and repeal the 1995 amnesty laws, which help create an atmosphere of impunity. The Committee urges the State party to refrain from adopting a new amnesty act.

(10) The Committee expresses its concern about the fact that the judiciary is still being reorganized in Peru and that the existence of the Executive Judiciary Commission, which has broad powers, leads to interference by the Executive and undermines the independence of the judiciary and the rule of law. One of the consequences of this reorganization is the large number of temporary judges. The Committee is especially concerned about the dismissal of the three Constitutional Court judges, Delia Revoredo Marsano de Mur, Manuel Aguirre Roca and Guillermo Rey Terry, by the Congress in 1997. An impartial and independent system of justice is essential for compliance with a number of articles of the Covenant, notably article 14.

(a) The State party must take the necessary measures to regularize the situation of the temporary judges, who may be dismissed peremptorily, and to guarantee their job security.

(b) The State party must reinstate the three Constitutional Court judges in their posts in order to normalize the Court.

(c) The State party must establish a mechanism guaranteed by law that ensures the independence and impartiality of judges and eliminates the possibility of the Executive interfering in the Judiciary.

(11) The Committee appreciates the fact that Peru has released some of the persons convicted of the crime of terrorism on insufficient evidence and has pardoned them. However, it states once again that a pardon does not constitute full compensation for the victims of proceedings in which the rules of due process have been breached and in which innocent persons have been found guilty.

(a) The State party must establish an effective mechanism for the review of all sentences imposed by the military courts for the offences of terrorism and treason, which are defined in terms that do not clearly state which conduct is punishable.

(b) The State party must also release immediately all persons whose situation has now been decided by the Pardons Board.

(12) The Committee deplores the fact that the military courts continue to have jurisdiction over civilians accused of treason, who are tried without the guarantees provided for in article 14 of the Covenant.

The Committee refers in this context to its General Comment No. 13 on article 14 and emphasizes that the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice.

(13) As indicated during the consideration of the third periodic report, the Committee considers that detention for up to 15 days in cases of terrorism, drug trafficking and espionage does not comply with article 9 of the Covenant.

It draws attention to the State party's obligation to amend its legislation so that any person who has been detained may be placed without delay at the disposal of the judiciary.

(14) The Committee expresses its concern about poor conditions of detention, particularly in Lurigancho prison in Lima and the maximum security prisons of Yanamayo, in Puno, and Challapalca, in Tacna (high-altitude prisons where visiting rights, inter alia, are far from easy to exercise owing to the difficulty family members have in reaching them). Conditions in these prisons do not comply with article 10 of the Covenant.

The Committee urges the State party to take the necessary measures to improve prison conditions in Peru. In particular, it urges the State party to reduce the prison population of Lurigancho prison and close down Yanamayo and Challapalca prisons.

(15) The Committee expresses its concern about the continuing practice of one year's isolation for convicted and unconvicted prisoners, in accordance with the regulations on the living conditions and progressive treatment of prisoners who are difficult to rehabilitate, those awaiting trial or sentenced for ordinary offences or for terrorism or treason. Such isolation may be extended when the person concerned breaks a rule, however minor.

The Committee urges the State party to review this practice, which affects the physical and mental health of persons deprived of their liberty and constitutes cruel, inhuman or degrading treatment or punishment, thus hampering full compliance with articles 7 and 10 of the Covenant.

(16) The Committee notes with concern that there is a growing number of complaints of systematic harassment and death threats against journalists intended to undermine freedom of expression.

The Committee requests the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression, to investigate all complaints which have been filed and to bring the persons responsible to justice.

(17) The Committee deplores the methods used by Peru to take control of communications media away from persons critical of the Government, including stripping one of them of his nationality.

The Committee requests the State party to eliminate these situations, which affect freedom of expression, in accordance with article 19 of the Covenant, and to make effective remedies available to those concerned.

(18) The Committee deplores the fact that, of the four opposition members of Parliament who were victims of repeated acts of intimidation and about whom it requested reports from the Government, vague replies were given only about Mr. Gustavo Molme Llona, who has since died; no explanation was given about the three others, Javier Díez Canseco, Henry Pease García, Jorge del Castillo and some of their co-workers, and not a single reference was made to the investigations conducted in order to find the persons responsible.

The intimidation of members of Parliament, which prevents them from representing their constituents and exercising their functions freely and independently, must cease immediately and acts of intimidation must be investigated and the persons responsible punished.

(19) The Committee considers the effective implementation of laws safeguarding human rights to be of the greatest importance.

The Committee requests the State party, in its next report, to provide detailed information on the effective implementation of the new civil and criminal legislation recognizing the rights of women.

(20) It is a matter of concern that abortion continues to be subject to criminal penalties, even when pregnancy is the result of rape. Clandestine abortion continues to be the main cause of maternal mortality in Peru.

The Committee once again states that these provisions are incompatible with articles 3, 6 and 7 of the Covenant and recommends that the legislation should be amended to establish exceptions to the prohibition and punishment of abortion.

(21) The Committee is concerned about recent reports of forced sterilizations, particularly of indigenous women in rural areas and women from the most vulnerable social sectors.

The State party must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely.

(22) The Committee sets 31 October 2003 as the date for the submission of the fifth periodic report of Peru. It requests that the text of the fourth periodic report of the State party and the

present concluding observations should be published and widely disseminated in Peru and that the next periodic report should be made available to civil society and non-governmental organizations working in Peru.

77. **Venezuela**

(1) The Committee considered the third periodic report of Venezuela (CCPR/C/VEN/98/3 and Addendum) at its 1899th and 1900th meetings, held on 19 and 20 March 2001, and adopted the following concluding observations at its 1918th meeting, held on 2 April 2001.

**Introduction**

(2) The Committee welcomes the State party's third periodic report and the opportunity to be able to continue its review of the human rights situation in Venezuela with a delegation that included officials from various Government bodies. However, it regrets the delay in submission of the report and the lack of information on the de facto human rights situation in both the report and the addendum, which greatly hindered it in determining whether human rights are fully and effectively exercised and enjoyed in Venezuela.

**Positive aspects**

(3) The Committee expresses its satisfaction at the fact that the Constitution gives international human rights instruments a status equal to that of the Constitution itself.

(4) The Committee also notes with satisfaction the numerous provisions of the Constitution which are designed to recognize and guarantee various human rights, including the establishment of an Office of the Ombudsman.

**Subjects of concern and recommendations**

(5) The Committee is concerned to discover that article 19 of the Constitution guarantees citizens their rights "in accordance with the principle of progressiveness", a principle that has not been satisfactorily explained.

(6) The Committee is gravely concerned at the reports of disappearances, despite the fact that such acts have been defined as crimes under the new legislation. It is also concerned at the lack of action by the State to deal with disappearances that occurred in 1989. The delegation's statement that investigations of the disappearances are being pursued is unsatisfactory.

> Taking into account the provisions of articles 6, 7 and 9 of the Covenant, the State party should give special priority to rapid and effective investigations designed to determine the whereabouts of the disappeared persons and those responsible for disappearances. The State party should also take all necessary measures to prevent disappearances, including adoption of the legislation described in article 45 of the Constitution.

(7) The Committee is also gravely concerned at the many reports of extrajudicial executions and the failure of the State party to react to them.

The State party should conduct investigations to identify those responsible for extrajudicial executions and bring them to justice. It should also take the necessary measures to prevent the occurrence of such violations of article 6 of the Covenant.

(8) The Committee is deeply concerned at the reports of torture and excessive use of force by the police and other security forces in breach of article 7 of the Covenant; the State party's apparent delay in responding to such occurrences; and the absence of independent mechanisms to investigate the reports in question. The right of recourse to the courts is not a substitute for such mechanisms.

The State party should establish an independent body empowered to receive and investigate all reports of excessive use of force and other abuses of authority by the police and other security forces, to be followed, where appropriate, by prosecution of those who appear to be responsible for them. The Committee also urges the State party to pass laws giving effect to the prohibition of torture and cruel, inhuman and degrading treatment laid down in article 7 of the Covenant and article 46 of the Constitution, and strengthen the human rights education programmes for all State officials whose functions are related to the treatment of detainees.

(9) The Committee regrets the lack of detailed information on detention by the police. It is also concerned at the lack of clarity on the status and powers of the Sectoral Department of Intelligence and Presentation Services (DISIP), especially given the large number of complaints about the treatment of detainees.

To enable the Committee to evaluate its compliance with articles 9, 10 and 14 of the Covenant, the State party needs to tell it whether detained persons are brought before a judge or an official with judicial authority without delay; whether a lawyer may be present during their interrogation by the police; whether they are automatically given medical check-ups on entering and after being released from police custody; what regulations govern the holding of detained persons incommunicado; whether appropriate legislation has been enacted to implement all the provisions of the Constitution with respect to detention; and the status and powers of DISIP.

(10) The Committee regrets the lack of information on the average time spent in detention awaiting judgement. The length of such detention may raise issues of compatibility with article 9, paragraph 3, and article 14 of the Covenant.

The State party should speed up trials and abide strictly by article 9, paragraph 3, of the Covenant in order to bring the situation into line with the requirements of the Covenant.

(11) The Committee is concerned at conditions in Venezuelan prisons and places of detention, since the delegation itself acknowledged that most human rights violations in Venezuela occur in such places. The overcrowding and failure to segregate detainees awaiting judgement from convicts are incompatible with the Covenant.

The recently established institutional mechanisms (supervising prosecutors and prison-supervising judges) for supervising conditions in prisons and investigating the complaints of prisoners should be strengthened with a view to the implementation of articles 7 and 10 of the Covenant.

(12) While the Committee in principle welcomes the reform of the Code of Criminal Procedure, it is concerned at the lack of information on the provisions of the Code offering guarantees of a fair trial as called for by article 14 of the Covenant.

The State party should provide such information as soon as possible.

(13) The Committee is particularly concerned at the situation of the judiciary in Venezuela, which is still undergoing reform. An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a result of the performance of their duties, thus infringing article 2, paragraph 3, and article 14 of the Covenant. Another cause for concern is the lack of information on the effects of the reform process to date and the absence of a date for that process to come to an end.

The reform of the judiciary must not continue. The State party should furnish information on the number of judges removed during the process, the reasons for their removal, and the procedure followed.

(14) The Committee's concern about the independence of the judiciary extends to the information, delivered by the delegation, that article 275 of the Constitution empowers the National Ethics Council (Consejo Moral Republicano) comprising the Ombudsman, the Attorney-General and the Comptroller-General to issue warnings to judges, even those of the Supreme Court, and impose sanctions if those warnings are not heeded.

The State party should carry out a careful review of the enabling bill for article 275 of the Constitution in order to safeguard the independence of the judiciary in accordance with article 2, paragraph 3, and article 14 of the Covenant.

(15) The Committee is greatly concerned at the treatment of persons seeking asylum or refuge in Venezuela, especially those entering the country from Colombia, chiefly because of the lack of national legislation establishing selection criteria for asylum-seekers even though there are bilateral arrangements between Colombia and Venezuela on such matters. The Committee is also concerned about the possible breach of the principle of non-refoulement.

The State party should ensure compliance with articles 7 and 13 of the Covenant and with the norms of general international law, adhere to or implement the relevant international conventions, provide access to the relevant specialized agencies in the areas concerned, and seek the assistance, if necessary, of the international bodies dealing with the matter.

(16) The Committee is deeply concerned by the information on trafficking in women to Venezuela, especially from neighbouring countries, and by the lack of information from the delegation on the extent of the problem and action to combat it.

Preventive measures should be taken to eliminate the trafficking in women in order to comply with the provisions of articles 7 and 8 of the Covenant and set up rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.

(17) The Committee is concerned about the level of violence against women, including the many reported cases of kidnapping and murder that have not resulted in arrests or prosecution of those responsible. It is also concerned at the many allegations of rape or torture of women in custody by members of the security forces, offences such women do not dare to report. All the foregoing gives rise to serious concerns in the light of articles 6 and 7 of the Covenant.

The State party should take effective measures to guarantee women's safety, ensure that no pressure is put on them to dissuade them from reporting such violations, that all allegations of abuses are investigated and that those committing such acts are brought to justice.

(18) The minimum marriageable age, 14 for girls and 16 for boys, and the fact that such age may be lowered without any limits for girls in case of pregnancy or childbirth, raises problems with respect to the fulfilment by the State party of its obligation under article 24, paragraph 1, to protect minors. Marriage at such an early age does not appear to be compatible with article 23 of the Covenant, which requires the free and full consent of the intending spouses. The Committee is also concerned at the early age of sexual consent (12) for girls.

The State party should amend the relevant law to bring it into line with articles 23, 24 and 3 of the Covenant.

(19) The criminalization of all non-therapeutic abortion poses serious problems, particularly in the light of unchallenged reports that many women are undergoing life-threatening illegal abortions. The legal duty imposed on health workers to report cases where women have undergone abortions may deter women from seeking medical treatment, thereby endangering their lives.

The State party must adopt the necessary measures to guarantee the right to life (art. 6) for pregnant women who decide to terminate their pregnancies, including amending the law to create exceptions to the general prohibition of all non-therapeutic abortion. The State party should protect the confidential nature of medical information.

(20) The Committee is concerned about the continued existence of a legal provision exempting a rapist from any penalty if he marries the victim.

The State party should immediately repeal this legislation, which is incompatible with articles 3, 7, 23, 26, 2 (3) and 24 of the Covenant, particularly taking into account the early age at which girls can enter into marriage.

(21) The Committee is concerned about the insufficient participation of women in political life, the judiciary, and other sectors.

In order to comply with articles 3 and 25, the State party should take the appropriate measures to improve participation by women, through affirmative action programmes if necessary.

(22) With a view to complying with its obligations arising from articles 2, 3 and 26 of the Covenant, the Committee urges the State party to amend all laws that still discriminate against women, including those relating to adultery and the ban on marriage for 10 months following the dissolution of a previous marriage.

(23) The Committee is concerned at the lack of a wide-ranging law prohibiting discrimination in private-sector areas such as employment and housing. Pursuant to article 2, paragraph 3, and article 26 of the Covenant, the State party has a duty to protect persons against such discrimination.

The State party should promulgate a law prohibiting all discrimination and providing effective recourse for all persons against violations of their right to non-discrimination.

(24) The Committee deplores the continually worsening situation of street children. Those children are at high risk of sexual violence and are vulnerable to sexual trafficking.

The State party should take effective measures for the protection and rehabilitation of street children, pursuant to article 24 of the Covenant, including measures to end sexual exploitation and child pornography.

(25) The Committee notes the privileged status of the Roman Catholic Church and is concerned about the possible adverse effects of this on other religions.

The State party should guarantee that no religious community in Venezuela will suffer discrimination.

(26) The Committee notes that there is no provision in Venezuelan law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant.

The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.

(27) The Committee is very concerned about interference by the authorities in trade-union activities including the free election of union leaders.

The State party should, pursuant to article 22 of the Covenant, guarantee that unions are free to conduct their business and choose their business without official interference.

(28) The Committee commends the State party for its constitutional provisions relating to indigenous populations, particularly articles 120 and 123 requiring indigenous communities to be notified and consulted beforehand if the State wished to exploit natural resources in areas they

inhabited and enshrining the right of indigenous peoples to pursue and promote their own economic practices. It regrets, however, the lack of any information regarding the practical implementation of those constitutional provisions.

The State party should provide information to the Committee on the implementation of those constitutional provisions with a view to complying with article 27.

(29) The State party should widely publicize the text of its third periodic report, the addendum and these concluding observations.

(30) The State party should, pursuant to article 70, paragraph 5, of the Committee's rules of procedure, furnish within one year information on any action it takes in the light of the Committee's recommendations on enforced or involuntary disappearances (paras. (6) and (7) above), torture and the excessive use of force by the police and other security forces (para. (8)), police detention and detention while awaiting judgement (paras. (9) and (10)), prisons (para. (11)) and the status of the judiciary and due process (paras. (12)-(14)). The Committee requests the incorporation of information on the remainder of its recommendations in the fourth periodic report, due for submission by 1 April 2005.

78. **Dominican Republic**

(1) The Committee examined the fourth periodic report of the Dominican Republic (CCPR/C/DOM/99/3) at its 1906th and 1907th meetings, held on 23 March 2001, and at its 1921st meeting (seventy-first session), held on 3 April 2001, adopted the following observations.

**Introduction**

(2) The Committee welcomes the fourth periodic report of the Dominican Republic and the opportunity to continue to study the situation of human rights with the State party through a delegation made up of officials from various sectors of the Government. Nevertheless, it notes with concern that the information provided in the report is in many respects incomplete, that important recommendations made during the consideration of the previous report have not been taken into account, and that Committee guidelines were not followed in its elaboration. The Committee would have welcomed a more in-depth evaluation by the State party of the existing legislative deficiencies and the factors and difficulties encountered in implementation of the Covenant. However, the Committee expresses its gratitude to the delegation for the updated additional information which it provided in reply to the questions posed by members.

**Positive aspects**

(3) The Committee is pleased that its recommendation to revise the Constitution of the Dominican Republic has been accepted and that a new text was ratified and promulgated on 14 August 1994. The Committee notes that the new Constitution omits clauses which were incompatible with the Covenant, for example the penalty of internal exile and reciprocity for protection of the human rights of aliens.

(4) It is also gratified to learn of the repeal of Decree-Law No. 233-91, which had led to mass deportations of Haitian workers under 16 and over 60 years of age, seriously violating several articles of the Covenant, as noted in the concluding observations on the previous report.

(5) The Committee also notes with satisfaction both the establishment in the Constitution of the National Board of the Judiciary, which is responsible for appointing the members of the Supreme Court, and the legal establishment of the Office of Ombudsman.

**Principal causes of concern and recommendations**

(6) The Committee points out that article 3 of the current Constitution recognizes and applies the norms of international law which have been adopted by the State party and that, since these include the International Covenant on Civil and Political Rights, the Covenant has constitutional standing. However, it notes with regret that, in general, there has been a lack of progress in the implementation of the Covenant since the consideration of the third periodic report. In particular, a significant body of legislation is still incompatible with the Covenant, despite the fact that the latter has higher standing and that over 21 years have elapsed since the Dominican Republic acceded to it.

(7) The Committee regrets the fact that it has not been informed unequivocally about the application of the Covenant within the Dominican Republic or about action in response to its decisions under the Optional Protocol, and regrets in particular the lack of clarity in the response given to communication 449/1991 (Mojica v. Dominican Republic).

The State party should provide that information (art. 2) to the Committee.

(8) The Committee notes with great concern the information from the delegation that 229 people suffered violent deaths at the hands of the police force in 2000, and that according to other sources the figure could be higher still. It has taken note with equal concern of the reports of extrajudicial executions of prisoners in the custody of the State party in its prisons and of deaths at the hands of the National Police, the Armed Forces and the National Drug Control Office owing to the excessive use of force and the apparent impunity that they enjoy.

The State party should take urgent steps to ensure respect for article 6 of the Covenant, to have those responsible for violations of the right to life guaranteed thereunder prosecuted and punished, and to make redress.

(9) The Committee notes with concern that, despite being prohibited by the Constitution (art. 8.1), torture is widespread, occurring in prisons and elsewhere, that not all its forms are classified as crimes under the law and that no independent body exists to investigate the many complaints of torture and cruel, inhuman or degrading treatment. Reports that acts of torture have not been investigated, that the perpetrators of those acts have in the majority of cases not been brought to trial and that victims and their families have not been compensated are also cause for concern.

The State party should take prompt action to comply fully with article 7 of the Covenant and to have violations thereof investigated so that the culprits may be tried and punished by ordinary courts and redress provided.

(10) The Committee deplores the fact that the National Police has its own judicial body, separate from that established by the Constitution, to try crimes and offences by its members; this is incompatible with the principle of equality before the law protected by articles 14 and 2, paragraph 3, of the Covenant. The Committee also observes that, although the police is a civilian body legally subordinate to the Department of the Interior and Police, in practice it is subject to military authority and discipline, to the extent that the chief of police is a general of the armed forces on active duty.

The State party should ensure that the jurisdiction of the police tribunals is restricted to internal disciplinary matters and that their powers to try police officers accused of common crimes are transferred to the ordinary civilian courts.

(11) Despite the creation of more courts, the Committee notes that the high percentage of prisoners in pre-trial detention observed in the third report has increased. This means that many people accused of crimes remain in detention waiting for their trials to end, which is counter to article 9, paragraph 3, and article 14, paragraph 2, of the Covenant.

The State party should reform the law immediately to make pre-trial detention the exception rather than the rule, used only when strictly necessary. It should also provide statistics on the number of people in pre-trial detention and the size of the prison population.

(12) The power to hold prisoners incommunicado continues to provoke deep concern.

The State party should revise the law to ensure that detention incommunicado does not violate articles 7, 9 and 10 of the Covenant.

(13) The Committee is seriously concerned at the statement in paragraph 78 of the report that applications for habeas corpus are heard weeks or months after receipt. This is incompatible with article 9 of the Covenant.

The State party should take prompt action to enable the courts to rule on the legality of detentions as quickly as possible.

(14) The Committee has noted with serious concern that, far from improving as a result of the construction of new facilities and the renovation of older ones, the situation in prisons and other places of detention has worsened owing to the increase in the number of prisoners, enormous overcrowding, deplorable sanitary conditions, failure to separate juveniles from adults and men from women and the existence of solitary confinement cells without light, windows or ventilation.

The State party should establish institutional mechanisms to supervise prison conditions with a view to complying with article 10 of the Covenant and to investigate prisoners' complaints. The prison renovation programme that has been announced should go ahead as soon as possible.

(15) The Committee is concerned to learn that prisons are guarded by the police and the army because there is no prison guard service, although training courses to that end have started.

To comply with article 10 of the Covenant, the State party needs to establish as soon as possible a specialized prison guard service independent of the police investigation services and the armed forces that meets the United Nations standard minimum rules on the treatment of prisoners and is given instruction in human rights.

(16) The Committee is gravely concerned at the continuing reports of mass expulsions of ethnic Haitians, even when such persons are nationals of the Dominican Republic. It holds mass expulsions of non-nationals to be in breach of the Covenant since no account is taken of the situation of individuals for whom the Dominican Republic is their own country in the light of article 12, paragraph 4, nor of cases where expulsion may be contrary to article 7 given the risk of subsequent cruel, inhuman or degrading treatment, nor yet of cases where the legality of an individual's presence in the country is in dispute and must be settled in proceedings that satisfy the requirements of article 13.

The State party should guarantee the right of every Dominican national not to be expelled from the country and ensure that all persons facing deportation proceedings are covered by the safeguards established in the Covenant.

(17) The Committee expresses its concern over the failure to protect Haitians living or working in the Dominican Republic from serious human rights abuses such as forced labour and cruel, inhuman or degrading treatment. It also expresses concern over the living and working conditions of Haitian workers and the tolerated practices that restrict their freedom of movement.

The State party should give priority to addressing the issue of the working and living conditions of Haitian workers, and ensure that those workers can take advantage of the rights and safeguards laid down in articles 8, 17 and 22 of the Covenant.

(18) The Committee is concerned at the abuse of the legal notion of "transient aliens". According to information in its possession, such persons may be born in the Dominican Republic to parents who were also born there but are still not considered to be nationals of the Dominican Republic.

The State party should regulate the situation of everyone living in the country and grant the rights recognized by article 12 of the Covenant.

(19) The Committee welcomes the greater level of participation of women in political life but cannot fail to express its concern over a number of issues where the rights of women are not properly respected, especially their rights to legal equality, equal opportunities in the workplace,

their still limited participation in public and private life, and levels of domestic violence. Since it was not given sufficient information, the Committee has not been able to make a thorough assessment of the situation of women in Dominican society but it acknowledges that the establishment and work of the Department for the Advancement of Women is a positive development for combating the domestic violence, rape and sexual abuse to which many women are subjected. It has also been unable, for want of information to assess the extent of trafficking in women.

The State party should provide such information to the Committee as soon as possible so that its compliance with articles 3, 25 and 26 of the Covenant can be properly evaluated and should respect and guarantee all the rights of women. To that end, it should provide the necessary support to the Department for the Advancement of Women to enable it to achieve its goals.

(20) The Committee expresses concern over the lack of information on the protection of the rights of ethnic, religious and linguistic minorities in the Dominican Republic. The delegation's explanation that minorities are so integrated into the country's culture that they cannot be considered as such is not sufficient.

The State party should provide the Committee with information on its application of article 27 of the Covenant.

(21) The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

(22) The Committee takes note of the existence of a crime of "desacato" (disrespect of authority), which it deems contrary to article 19 of the Covenant.

The State party should take steps to abolish that crime.

(23) The State party should widely disseminate the text of its fourth periodic report and these concluding observations.

(24) The State party should, pursuant to rule 70, paragraph 4, of the Committee's rules of procedure, send information within one year on action it has taken in the light of the Committee's recommendations on disappearances and extrajudicial executions (para. (8) above), torture and the use of excessive force by the police and security forces (para. (9)), police detention and detention pending judgement (paras. (11), (12) and (13)), prisons (paras. (14) and (15)) and the status of Haitians (paras. (16), (17) and (18)). The Committee hopes that information in response to the remainder of its recommendations will be incorporated into the fifth periodic report due for submission by 1 April 2005.

## 79. Uzbekistan

(1) The Committee considered the initial report of Uzbekistan (CCPR/C/UZB/99/1) at its 1908th, 1910th and 1911th meetings, held on 26 and 27 March 2001, and adopted the following concluding observations at its 1922nd meeting, held on 4 April 2001.

### Introduction

(2) The Committee has examined the detailed and comprehensive initial report of Uzbekistan, covering events since the country's independence in 1991. It appreciates the frankness with which the report acknowledged problems and shortcomings encountered in the implementation of Covenant rights, and the State party's willingness to provide further information and statistics in writing. It regrets, however, the delay in the submission of the initial report and the fact that the report does not give a full picture of the human rights situation in practice.

### Positive aspects

(3) The Committee commends the State party, which is in a period of transition from totalitarian rule, compounded by instability in the region, for undertaking the process of bringing its legislation into harmony with its international obligations. It notes the ratification of a number of human rights treaties and the enactment of many laws in order to bring domestic legislation into line with the requirements of the Covenant.

(4) The Committee expresses its satisfaction at the fact that an agreement has been reached between the State party and the International Committee of the Red Cross, by which the Red Cross is authorized to visit Uzbek prisons and to examine conditions in detention facilities.

(5) The Committee welcomes the information provided by the State party in relation to its language policy, whereby education at all levels is offered in 10 languages, including the languages of the minority groups.

### Principal subjects of concern and recommendations

(6) The Committee deplores the State party's refusal to reveal the number of persons who have been executed or condemned to death, and the grounds for their conviction, both during the time covered by the report and during the time elapsed since then.

> The State party should provide such information as soon as possible, to enable the Committee to monitor the State party's compliance with article 6 of the Covenant.

(7) Taking into account article 7 of the Covenant, the Committee is gravely concerned about consistent allegations of widespread torture, inhuman treatment and abuse of power by law enforcement officials. The Committee is also concerned about the limited number of investigations into allegations of torture.

The State party should ensure that all allegations of torture are properly investigated and the persons responsible prosecuted. Complaints about torture and other forms of abuse by officials should be investigated by independent bodies. Provision should be made for medical examination of detained persons, particularly persons held in pre-trial detention, in order to ensure that no physical abuse of detainees occurs. The State party should institute an independent system of monitoring and checking all places of detention and penal institutions on a regular basis, with the purpose of preventing torture and other abuses of power by law enforcement officials. Free access to lawyers, doctors and family members should be guaranteed immediately after the arrest and during all stages of detention.

(8) The Committee appreciates that the recently established Constitutional Court delivered a judgement holding that statements made under duress would not be admissible in evidence. The Committee also takes note that it was assured by the State party's delegation that any allegation of torture by a defendant will lead to an immediate discontinuation of the case and a separate examination of the truthfulness of the allegation. However, the Committee remains concerned at allegations of the continued use of torture and other forms of inhuman treatment by law enforcement officials, particularly for the purpose of extorting confessions, in violation of article 7 and article 14, paragraph 3 (g), of the Covenant. It is also concerned about allegations that judges refuse to take into account any evidence provided by the accused with regard to his/her treatment by law enforcement officials.

The State party must ensure that all allegations of ill-treatment by public officials which are brought before the courts by detainees are investigated by the presiding judge and that the persons responsible are prosecuted. The State party must ensure that no one is compelled to testify against himself or herself or to confess guilt.

(9) The Committee continues to be concerned about conditions in detention centres and penal institutions in Uzbekistan. The Committee is also concerned that insufficient information has been provided in this regard, except the State party's comments on conditions in the Jasluk prison. The Committee is particularly concerned about numerous allegations of deaths in prisons and the return of marked and bruised corpses to the families of detainees.

The State party should ensure that measures are taken to improve conditions in detention centres and penal institutions so that they are compatible with articles 7 and 10 of the Covenant. The State party should ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

(10) The Committee is particularly concerned at information about the extremely poor living conditions of detainees on death row, including the small size of cells and the lack of proper food and exercise.

The State party should take immediate action to improve the situation of death row inmates in order to bring their conditions into line with the requirements of article 10, paragraph 1, of the Covenant.

(11) The Committee is concerned that from the time an accused person is arrested, and throughout the judicial procedure, until the final judgement, the accused remains in the hands of and under the authority of the police or the Ministry of the Interior.

The State party should ensure that promptly after apprehension the accused is removed from the custody of the authorities responsible for law enforcement and brought under the jurisdiction of the authorities responsible for the administration of justice, thus minimizing the risks of a violation of articles 7, 9, paragraphs 1 and 2, and 10, paragraph 1, of the Covenant.

(12) The Committee is concerned about the length of detention (72 hours) before detainees are informed of the charges being brought against them. This period of detention before detainees are informed of the charges being brought against them is too long and not in compliance with article 9, paragraph 2, of the Covenant. The Committee also deplores the unwillingness of the delegation to answer questions relating to court review of arrest (art. 9, para. 3).

The State party should take urgent measures to bring the Law of Criminal Procedure into compliance with the Covenant, so that the accused are promptly informed of any charges against them and promptly brought before a judge.

(13) The Committee is concerned that there is no prohibition on the extradition or expulsion of individuals, including those seeking asylum in Uzbekistan, to countries where they may be exposed to risk of the death penalty, torture or to cruel, inhuman or degrading treatment or punishment.

The State party should ensure that individuals who claim that they will be subjected to torture, inhuman or degrading treatment, or the death penalty in the receiving State, have the opportunity to seek protection in Uzbekistan or at least assured of non-refoulement (articles 6 and 7 of the Covenant).

(14) The Committee is gravely concerned about the lack of independence of judges contrary to the requirements of article 14, paragraph 1, of the Covenant. The appointment of judges for a term of five years only, in particular if combined with the possibility, provided by law, of taking disciplinary measures against judges because of "incompetent rulings", exposes them to broad political pressure and endangers their independence and impartiality.

The State party should amend the relevant domestic legal provisions, as well as the Constitution, in order to ensure full independence of the judiciary.

(15) The Committee notes with concern that military courts have broad jurisdiction. It is not confined to criminal cases involving members of the armed forces but also covers civil and criminal cases when, in the opinion of the executive, the exceptional circumstances of a particular case do not allow the operation of the courts of general jurisdiction. The Committee notes that the State party has not provided information on the definition of "exceptional circumstances" and is concerned that these courts have jurisdiction to deal with civil and criminal cases involving non-military persons, in contravention of articles 14 and 26 of the Covenant.

The State party should adopt the necessary legislative measures to restrict the jurisdiction of the military courts to trial of members of the military accused of military offences.

(16) The Committee is deeply concerned at the information that more than 1,300 Tajiks, citizens of Uzbekistan, were resettled from their villages in the mountains to the steppes of the Sherabad region, about 250 miles away. The State party explained that the action was taken in order to improve the living conditions of the people concerned. It did not, however, refute that the resettlement was enforced by military forces, that the Tajiks had to leave their homes without their belongings and that their villages were subsequently destroyed.

The State party should immediately stop any further action to expel people from their homes in violation of articles 12 and 17 and possibly, in certain situations, article 27 of the Covenant. The State party should take steps to compensate the individuals concerned for the loss of their property and their suffering, resulting from their forcible displacement and its aftermath, and to report on their present living conditions.

(17) The Committee is concerned about the broad notion of "rights and interests of the Republic of Uzbekistan" as a general limitation on the enjoyment of human rights in article 16 which, taken together with article 20 of the State party's Constitution, gives rise to apprehension that human rights could be restricted at the discretion of the State.

The State party should take measures effectively to ensure that these articles of the Constitution are not used for the purposes of restricting human rights. contrary to article 2 of the Covenant.

(18) The Committee is particularly concerned about the definition of "State secrets and other secrets" as defined in the Law on the Protection of State Secrets. It observes that the definition includes issues relating, inter alia, to science, banking and the commercial sector and is concerned that these restrictions on the freedom to receive and impart information are too wide to be consistent with article 19 of the Covenant.

The State party should amend the Law on the Protection of State Secrets to define and considerably reduce the types of issues that are defined as "State secrets and other secrets", thereby bringing this law into compliance with article 19 of the Covenant.

(19) The Committee expresses grave concern about the prevalence of violence against women, including domestic violence.

The State party should take effective measures to combat violence against women, including marital rape, and ensure that violence against women constitutes an offence punishable under criminal law. The State party should also organize awareness campaigns to address all forms of violence against women, including domestic violence, in order to comply fully with articles 3, 6, 7 and 26 of the Covenant.

(20) The Committee is concerned that the traditional attitudes to women, whereby a woman's role continues to be seen by the State primarily as that of wife and mother, exclusively responsible for children and the family, make the establishment of equality for women very difficult. The Committee is also concerned about the limited contribution by women to civil society (articles 3 and 26 of the Covenant).

> The State party should take measures to overcome traditional attitudes regarding the role of women in society. It should take steps to increase the number of women in decision-making bodies at all levels and in all areas. It should also organize special training programmes for women and regular awareness campaigns in this regard.

(21) The Committee expresses its concern about cases of children being detained, arrested and held in custody without being able to exercise their right to a lawyer, and subjected to ill-treatment and unlawful investigative methods, in contravention of articles 7, 10 and 24 of the Covenant. The Committee is also concerned about the lack of information on this subject and on the policy the State party intends to pursue to address this problem.

> The State party should include more information, in its next report, on the situation of children held in custody and progress being made in this area. The State party should enact a new criminal procedure law to deal specifically with juveniles.

(22) While the Committee recognizes the willingness of the State party to cooperate with some international non-governmental organizations active in human rights issues, it notes that the State party has not taken up an effective dialogue with national non-governmental human rights organizations. The legal requirement for registration, subject to the fulfilment of certain conditions, provided for in article 26 of the Constitution and the Public Associations in the Republic of Uzbekistan Act of 1991 operates as a restriction on the activities of non-governmental organizations.

> The State party should take the necessary steps to enable the national non-governmental human rights organizations to function effectively. The Committee recommends that the State party engage in intensive dialogue with these organizations on the situation in the country in order to improve the setting in which respect for human rights can be ensured (article 2 of the Covenant).

(23) The Committee is deeply concerned about excessively restrictive provisions of Uzbek law with respect to the registration of political parties as public associations, by the Ministry of Justice (article 6 of the Constitution, Political Parties Act of 1991). This requirement could easily be used to silence political movements opposed to the Government, in violation of articles 19, 22 and 25 of the Covenant.

> The Committee strongly recommends a revision of the relevant part of the State party's legislation to ensure that registration is not used to limit the rights of association guaranteed by the Covenant.

(24) The Committee is very concerned about provisions of the Freedom of Conscience and Religion Organizations Act that require religious organizations and associations to be registered

to be entitled to manifest their religion and beliefs. The Committee is also concerned about article 240 of the Penal Code, which penalizes the failure of leaders of religious organizations to register their statutes.

The Committee strongly recommends that the State party abolish the said provisions, which are not in conformity with the provisions of article 18, paragraphs 1 and 3, of the Covenant. Criminal procedures initiated on the basis of these provisions should be discontinued and convicted persons pardoned and compensated.

(25) While noting that the State party has established a variety of institutions for monitoring human rights, such as the Parliamentary Commissioner for Human Rights (Ombudsman), the Commission for the Observance of Citizen's Constitutional Rights and Freedoms, the Institute for Monitoring Current Legislation and the National Centre for Human Rights, the Committee is concerned that none of these institutions is entirely independent of the executive branch of government and that their investigative powers do not seem to allow them to take adequate steps to resolve complaints brought before them.

The Committee recommends that the powers of the Ombudsman be broadened and his/her independence secured.

(26) The Committee is concerned about the lack of training of public officials in international human rights standards.

The State party should organize training programmes for all public officials, particularly law enforcement officials and the judiciary, on human rights law and the Covenant in particular.

(27) While noting the establishment of a 24-hour confidential telephone line through which any citizen can report improper actions by officials, the Committee continues to be concerned about the intimidation and harassment of individuals, particularly those, including human rights defenders, who complain about ill-treatment and torture by public officials (articles 7 and 10 of the Covenant).

The State party must protect all individuals from harassment and ensure that persons whose rights and freedoms have allegedly been violated have an effective remedy in accordance with article 2, paragraph 3, of the Covenant.

(28) While welcoming the fact that the Covenant takes priority over national legislation and its provisions can be directly invoked before the courts, the Committee is concerned that no relevant case has as yet been brought before the courts.

The State party should make serious efforts to disseminate knowledge of the provisions of the Covenant among judges to enable them to apply the Covenant in relevant cases and among lawyers and the public to enable them to invoke its provisions before the courts (article 2 of the Covenant).

(29) The State party should widely publicize the text of its initial report, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

(30) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the death penalty (para. (7)), torture, inhuman treatment and abuse of power by officials (para. (8)), the treatment of detainees and the extortion of evidence (para. (9)), conditions in detention centres and penal institutions (para. (10)), the length of detention of detainees prior to charge and court review of arrest (para. (13)), the independence of judges (para. (15)) and the relocation of communities (para. (17)). The Committee requests that information concerning the remainder of its recommendations be included in the second periodic report to be submitted by 1 April 2004.

80. **Croatia**

(1) The Committee considered the initial report submitted by the Republic of Croatia (CCPR/C/HRV/99/1) at its 1912th, 1913th, 1914th and 1915th meetings, held on 28 and 29 March 2001, and adopted the following concluding observations at its 1923rd meeting, held on 4 April 2001.

**Introduction**

(2) The Committee has examined the detailed and comprehensive report of Croatia, covering events since the country gained its independence in 1991. The Committee is grateful to the delegation of Croatia for the updated information provided to it in regard to recent developments subsequent to the submission of the report. It further commends the delegation for supplying it with a great deal of information about the legal situation in Croatia, but regrets that it was not provided with more information with regard to the practical implementation of Covenant rights.

**Positive aspects**

(3) The Committee commends the State party for the serious attempt it has made to adopt a new rights-based Constitution that embodies internationally-recognized human rights and to enact a variety of legislation to enhance protection of such rights. It notes with satisfaction that the last parliamentary and presidential elections were conducted in a manner consistent with article 25 of the Covenant. Additionally, since these elections, significant amendments have been introduced in the Constitution and legislation so as to clarify the separation of powers between the three branches of the State, in particular moving from an over-concentration of power in the executive branch to a more balanced form of parliamentary oversight of the executive and strengthening of the independence of the judiciary.

(4) The Committee notes with satisfaction the State party's renewed commitment to cooperate with the International Criminal Tribunal for the Former Yugoslavia in order to ensure that all persons suspected of grave human rights violations during the 1991-1995 armed conflict are brought to trial.

(5) The Committee commends the State party for the series of proposed amendments to its laws concerning selection and discipline of judges, the amendment of article 14 of the Constitution so as to ensure equality of all persons, the enactment of the Public Assembly Act significantly strengthening protection of the right to freedom of assembly, and the series of judicial decisions upholding constitutional rights, many of which are rights protected by the Covenant. In particular, it welcomes judgements holding inadmissible evidence obtained from suspects without the presence of a lawyer and striking down as unconstitutional criminal sanctions for criticism of high officials.

(6) The Committee welcomes the constitutional provision abrogating the death penalty and commends the State party for its accession to the Second Optional Protocol to the Covenant.

**Principal subjects of concern and recommendations**

(7) The Committee appreciates that under the Croatian Constitution international treaties, including the Covenant, have legal force superior to that of domestic legislation, and that most Covenant rights have also been specifically incorporated in the Constitution. However, the judiciary is not generally trained in international human rights law, with the result that in practice there is very little direct enforcement of Covenant rights.

> The State party should intensify its efforts to educate judges and lawyers about the Covenant and its implications for interpretation of the Constitution and domestic legislation so as to ensure that all actions of the State party, whether legislative, executive or judicial, will be in accordance with its obligations under the Covenant.

(8) While welcoming the amendment to article 14 of the Constitution that extended equality to non-citizens, the Committee remains concerned that other provisions continue to restrict certain rights to "citizens", leaving uncertain whether such rights are guaranteed to all individuals in the territory of the State party and subject to its jurisdiction, as required under article 2, paragraph 1, of the Covenant.

> The State party should adopt necessary measures to clarify this situation.

(9) The Committee is concerned that article 17 of the Constitution, dealing with a state of emergency, is not entirely compatible with the requirements of article 4 of the Covenant, in that the constitutional grounds justifying a derogation are broader than the "threat to the life of the nation" mentioned in article 4; that measures of derogation are not restricted to those strictly required by the exigencies of the situation; and that non-derogable rights do not include the rights under article 8, paragraphs 1 and 2, article 11 and article 16 of the Covenant. Furthermore, the Committee is concerned that article 101 of the Constitution, which allows the President to issue decrees in "the event of a state of war or an immediate threat to the independence and unity of the State", has been employed so as to derogate de facto from Covenant rights in a manner that would seem to circumvent the restrictions in article 17 of the Constitution.

> The State party should ensure that its constitutional provisions on a state of emergency are compatible with article 4 of the Covenant and that in practice no derogation from rights should be permissible unless the conditions of article 4 have been met.

(10) While welcoming the establishment of specialized departments for the investigation of war crimes in the Ministry of the Interior, the Committee remains deeply concerned that many cases involving violations of articles 6 and 7 of the Covenant committed during the armed conflict, including the "Storm" and "Flash" operations, have not yet been adequately investigated, and that only a small number of the persons suspected of involvement in those violations have been brought to trial. Although the Committee appreciates the declared policy of the present Government of carrying out investigations, irrespective of the ethnic identity of those suspected, it regrets that it was not provided with detailed information on the number of prosecutions brought, the nature of the charges and the outcome of the trials.

The State party is under an obligation to investigate fully all cases of alleged violations of articles 6 and 7 and to bring to trial all persons who are suspected of involvement in such violations. Towards this end, the State party should proceed, as a matter of urgency, with the enactment of the draft law on the establishment of specialized trial chambers within the major county courts, specialized investigative departments, and a separate department within the Office of the Public Prosecutor for dealing specifically with the prosecution of war crimes.

(11) The Committee is concerned with the implications of the Amnesty Law. While that law specifically states that the amnesty does not apply to war crimes, the term "war crimes" is not defined and there is a danger that the law will be applied so as to grant impunity to persons accused of serious human rights violations. The Committee regrets that it was not provided with information on the cases in which the Amnesty Law has been interpreted and applied by the courts.

The State party should ensure that in practice the Amnesty Law is not applied or utilized for granting impunity to persons accused of serious human rights violations.

(12) The Committee notes the delegation's statement that the State party has a variety of measures at its disposal in its criminal law to combat the practice of trafficking of women into and through its territory, particularly for purposes of sexual exploitation. Despite widespread reports of the extent and seriousness of the practice, however, the Committee regrets that it was not provided with information on actual steps taken to prosecute the persons involved.

The State party should take appropriate steps to combat this practice, which constitutes a violation of several Covenant rights, including the right under article 8 to be free from slavery and servitude.

(13) The Committee regrets that it was not provided with information regarding the number of persons held in pre-trial detention and the length of the periods for which they are held. It is therefore not in a position to assess whether the practice in the State party is in conformity with article 9 of the Covenant.

(14) The Committee is concerned at reports about abuse of prisoners by fellow prisoners and regrets that it was not provided with information by the State party on these reports and on the steps taken by the State party to ensure full compliance with article 10 of the Covenant.

The State party should take steps to ensure compliance with the requirements of article 10.

(15) While noting recent efforts to simplify procedures and remove obstacles in the way of those wishing to return to Croatia, in particular displaced persons of Serbian ethnicity, the Committee remains concerned at the number of cases which are still outstanding and at the length of time these persons are having to wait for resolution of their cases.

The State party should ensure that no difficulties are put in the way of persons who left Croatia as a result of the armed conflict, in exercising their right, under article 12, paragraph 4, of the Covenant to return to their own country. The deployment of sufficient resources towards providing those persons, who have a right under the Covenant to return to Croatia, with accommodation must be a priority with the State party as it is essential to render enjoyment of this right meaningful.

(16) The Committee is deeply concerned by the heavy backlog of cases awaiting hearing before the Croatian courts, particularly in civil matters. The delays in the administration of justice are apparently compounded by the application of the statute of limitations to suspend or discontinue cases that, for reasons often not attributable to the litigant in question, have not been brought on for hearing.

While acknowledging the State party's admission that the administration of justice is in urgent need of redress, the Committee stresses that the State party should ensure compliance with all the requirements of article 14 of the Covenant. To this end, it urges the State party to accelerate its reform of the judicial system, inter alia through simplification of procedures, training of judges and court staff in efficient case management techniques.

(17) While the right to freedom of expression is constitutionally guaranteed, the variety of provisions in the Criminal Code dealing with offences against honour and reputation, covering areas of defamation, slander, insult and so forth, are uncertain in their scope, particularly with respect to speech and expression directed against the authorities. The Committee is of the view that, having regard to past experience where these provisions have been used to seek to stifle political discourse, a general review of this area of the State party's law is necessary.

The State party should work towards developing a comprehensive and balanced code in this area. This law should set out clearly and precisely the restrictions on the freedom of speech and expression and ensure that such restrictions do not exceed those permissible under article 19, paragraph 3, of the Covenant.

(18) The Committee acknowledges the delegation's concession that its law on association, which was prepared at the time the State party was engaged in armed conflict, fails to provide for full freedom of association as guaranteed under article 22 of the Covenant. In the light of the

Constitutional Court's judgement holding unconstitutional a variety of provisions in the Act, the Committee considers the time particularly appropriate to adopt a new comprehensive code providing to persons within the State party's jurisdiction full and comprehensive rights to freedom of association.

The Committee understands that the process of developing a new law on association is under way. The State party should proceed, as a matter of priority, with the enactment of the draft law to give full effect to its obligations under article 22 of the Covenant.

(19) The Committee is concerned at the lack of a comprehensive law prohibiting discrimination in private-sector areas such as employment and housing. Pursuant to article 2, paragraph 3, and article 26 of the Covenant, the State party has a duty to protect persons against such discrimination.

The State party should promulgate a law prohibiting all discrimination and providing effective recourse for all persons against violations of their right to non-discrimination.

(20) The Committee remains concerned about discrimination faced by members of the Serb ethnic minority in Croatia and requests the State party to provide it with information as to their position and on measures taken to prevent discrimination against them.

(21) While recognizing that there has been some progress in achieving equality for women in political and public life, the Committee remains concerned that the representation of women in Parliament and in senior official positions, including the judiciary, still remains low. The Committee regrets that the delegation was not in a position to provide the Committee with information relating to the representation of women in the private sector.

The State party should make every effort to improve the representation of women in the public and private sectors, if necessary through appropriate positive measures, in order to give effect to its obligations under articles 3 and 26.

(22) The Committee is concerned that the rights of members of ethnic, religious and linguistic minorities in national, regional and local representative and executive bodies, as well as their rights in social, cultural and economic fields of public and private life, should be more fully secured and articulated in the State party's legal framework, as the starting point to enhance the practical enjoyment by members of minorities of their rights under the Covenant. The Committee is also concerned that the Roma community is not accorded recognized minority status and that members of this community are particularly disadvantaged and suffer from discrimination.

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection against discrimination and are able to enjoy their own culture and use their own language, in accordance with article 27 of the Covenant.

(23) The Committee is concerned at the apparently low level of awareness amongst the public of the provisions of the Covenant and the Optional Protocol procedure.

The State party should publicize the provisions of the Covenant and the availability of the individual complaint mechanism provided in the Optional Protocol. It should consider the means by which it can give effect to the Views of the Committee in the cases coming before it.

(24) The State party should widely publicize the text of its initial report, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

(25) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the investigation and prosecution of persons responsible for grave human rights abuses during the period of armed conflict (para. (10)), the application of the Amnesty Law to persons accused of such violations (para. (11)), the expedition of the return of displaced persons to Croatia (para. (15)), the severe delays in the administration of justice (para. (16)), the discrimination faced by minorities, in particular the Serb ethnic minority (paras. (20) and (22)). The Committee requests that information concerning the remainder of its recommendations be included in the second periodic report to be presented by 1 April 2005.

81. **Syrian Arab Republic**

(1) The Committee considered the second periodic report of the Syrian Arab Republic (CCPR/C/SYR/2000/2) at its 1916th and 1917th meetings, held on 30 March 2001, and adopted the following concluding observations at its 1924th meeting, held on 5 April 2001.

**Introduction**

(2) The Committee has considered the second periodic report of the Syrian Arab Republic. It welcomes the submission of the report, which contains detailed information on Syrian legislation in the area of civil and political rights, and the opportunity to resume the dialogue with the State party after an interval of 24 years. It regrets the considerable delay in submitting the report, which was due in 1984, and the lack of information on the human rights situation in actual fact, which makes it difficult for the Committee to determine whether the State party's population is able fully and effectively to exercise its fundamental rights under the Covenant.

**Positive aspects**

(3) The Committee welcomes the information given by the delegation that a large number of political prisoners have been released since the early 1990s and, more recently, in July and November 2000.

(4) The Committee has noted evidence of developments within the State party that reflect some relaxation of political restraints that have raised serious questions of gross violations of rights protected by the Covenant.

**Subjects of concern and recommendations**

(5) The Committee has noted the status of the Covenant in the State party's internal legal framework. It also takes note of the assurances given by the State party's delegation, without adding further details or citing precise cases, that the Covenant may be directly invoked before the Syrian courts. It notes that the provisions of the Constitution of the Syrian Arab Republic frequently refer to the law. The law, however, rather than being an additional guarantee of the rights and freedoms proclaimed in the Constitution and ensuring that the provisions of the Covenant are given full effect, often tends to restrict the scope of application of the Covenant's provisions.

The State party should review its legislation in order to render it compatible with all the provisions of the Covenant. The Committee wishes to receive from the State party more precise information about the number of cases in which the Covenant was in fact invoked before the Syrian courts.

(6) The Committee is concerned at the fact that Legislative Decree No. 51 of 9 March 1963 declaring a state of emergency has remained in force ever since that date, placing the territory of the Syrian Arab Republic under a quasi-permanent state of emergency, thereby jeopardizing the guarantees of article 4 of the Covenant. It also regrets that the delegation did not provide details of the application of the state of emergency in actual situations and cases.

While noting the information given by the State party's delegation that the state of emergency is rarely put into effect, the Committee recommends that it be formally lifted as soon as possible.

(7) The Committee notes that the information given by the State party concerning the conditions for proclaiming a state of emergency is still not sufficiently precise. It remains concerned that some of the provisions of the 22 December 1962 Legislative Decree referred to in the report are too vague and imprecise and do not appear to be compatible with the requirements of article 4 of the Covenant, and that the legislation does not provide remedies against measures limiting citizens' fundamental rights and freedoms.

The State party should take appropriate steps to bring its state of emergency legislation fully into line with the requirements of article 4 of the Covenant, and the Committee requests detailed, precise information in this regard.

(8) The Committee takes note of the delegation's explanations that the death penalty is rarely imposed and even more rarely carried out. It nevertheless remains seriously concerned at the number of offences punishable by the death penalty and at the absence of any information on the number of death sentences imposed in the past 10 years and the number of executions carried out during the same period. This situation is particularly disturbing in the light of precise, consistent reports alleging that a large number of death sentences have been passed and executions carried out following unfair trials in which the accused were sentenced although evidence was used that had been obtained through confessions which had been made under torture.

The Committee calls upon the State party to ensure respect for articles 6, 7 and 14 (3) (g) of the Covenant and recommends that it reduce the number of offences punishable by the death penalty. The State party should also provide the Committee with statistics on the number of death sentences passed since 1990, the number and identity of persons executed during that period, the dates of execution and the grounds for their sentence.

(9) The Committee is concerned that the characterization of some of the political offences referred to in paragraph 60 of the report and punishable by the death penalty is vague and imprecise and includes common law offences.

The State party should make its legislation conform to article 6, paragraph 2, of the Covenant, which provides that sentence of death may be imposed only for the most serious crimes.

(10) The Committee is deeply concerned about allegations of extrajudicial executions and disappearances, on which the delegation failed to give sufficient and precise explanations and information. These allegations concern the disappearance of many Syrian nationals and of Lebanese nationals arrested in Lebanon by Syrian forces, then transferred to the Syrian Arab Republic.

The Committee urges the State party to establish an independent commission of inquiry on the above-mentioned disappearances. This commission should publish the results of its investigations within an appropriate time-frame, and the State party should ensure that its conclusions are acted upon, including, where applicable, through the indictment of law enforcement personnel identified in the results of such an investigation.

(11) The Committee is concerned about the absence of any independent oversight body and of non-governmental organizations in a position to consider the implementation of the human rights guaranteed by the Constitution and governed by law.

The State party should take the necessary measures to arrange for the monitoring of respect for human rights in its territory by an independent agency.

(12) The Committee is deeply concerned about constant and duly substantiated allegations of violations of article 7 of the Covenant, to which the delegation did not respond, which are attributed to law enforcement personnel. It notes with concern the many allegations that torture is practised in Syrian prisons, particularly Tadmur military prison.

The State party should ensure that complaints of torture and other abuses committed by agents of the State are considered by an independent body. The State party should institute a system of independent oversight of all detention facilities with a view to preventing all acts of torture and other abuses of power by law enforcement personnel.

(13) The Committee takes note of the information provided by the delegation on the conditions of detention in Syrian prisons. It nonetheless remains concerned about the many allegations of inhumane prison conditions and inadequate medical care in a number of prisons, particularly military prisons, including Tadmur prison.

The State party should take steps to improve prison conditions in the facilities referred to above. It must ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person. The State party must ensure that appropriate and timely medical care is available to all detainees.

(14) The Committee is concerned about the number of people held in pre-trial detention, some of whom are in solitary confinement. Hundreds of people have reportedly been arrested and detained without an arrest warrant or indictment, only to be released without judicial procedures having been initiated and, in many cases, after many years in detention.

The State party must ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge (article 9, paragraph 3, of the Covenant). The State party must ensure that all other aspects of its practice are consistent with the provisions of article 9 of the Covenant and that detainees have access to counsel and are permitted to contact their families. The next report should contain precise statistics on the number of people held in pre-trial detention and on the duration of and reasons for such detention.

(15) The Committee has noted the delegation's explanations to the effect that the independence and impartiality of the judiciary in the Syrian Arab Republic are fully assured. It nonetheless remains concerned about certain aspects of the appointment of judges which pose problems with regard to article 14, paragraph 1, of the Covenant. This is the case of the four-year renewable term of the members of the Supreme Constitutional Court (article 141 of the Constitution), which, as currently formulated, may compromise their independence vis-à-vis the executive branch. The Committee is also concerned that proceedings may be held in camera in circumstances not authorized by article 14, paragraph 1.

The State party should take appropriate measures to ensure and protect, at all levels, the independence and impartiality of the judiciary.

(16) In the Committee's view, the procedures of the State Security Court are incompatible with the provisions of article 14, paragraphs 1, 3 and 5. The public nature of proceedings before the State Security Court is not guaranteed. The Committee is also concerned about allegations, to which the delegation did not respond, that the Court has rejected complaints of torture, even in flagrant cases, and that some legal representatives have withdrawn in protest against the failure to respect the rights of the defence. Moreover, the Committee notes that the State Security Court's decisions are not subject to appeal.

The State party should ensure that the procedures of the State Security Court scrupulously respect the provisions of article 14, paragraphs 1 and 3, of the Covenant and should grant accused persons the right to appeal against the Court's decisions (article 14, paragraph 5, of the Covenant).

(17) The Committee observes that its questions on the composition and jurisdiction of military courts received summary responses, and notes the delegation's explanation that the procedures of military courts do not differ from those of civil courts. It nonetheless remains concerned about numerous allegations that the procedures of military courts do not respect the guarantees laid down in article 14 of the Covenant.

The Committee calls upon the State party to provide it with additional information on the composition, the jurisdiction and the procedures of military courts.

(18) The Committee notes that, notwithstanding the provisions of article 25 of the Constitution and the explanations given by the delegation in this regard, problems remain with respect to gender equality in the Syrian Arab Republic. In the Committee's view, the Personal Status Act No. 34 of 1975 contains provisions which are not compatible with articles 2, paragraph 1, 3 and 26, of the Covenant. The Committee notes, in particular, that the provisions on the rights and obligations of spouses during marriage and upon its dissolution include discriminatory elements.

The Committee recalls its General Comment No. 28 on equality of rights between men and women, and urgently calls upon the State party to take all necessary measures to make its legislation consistent with articles 2, paragraph 1, 3 and 26, of the Covenant.

(19) The Committee notes the absence, in the State party's report, of adequate information and statistical data on the status of women, particularly with regard to employment, remuneration and level of responsibility in both the public and the private sectors.

The State party should provide the Committee with such information and pertinent statistical data in its next periodic report.

(20) The minimum marriageable age is 17 years for girls and 18 for boys. The fact that the minimum age can be reduced by a judge to 15 years for boys and 13 for girls with the father's consent poses a problem with regard to the State party's obligation, under article 24, paragraph 1, to protect minors. Marriage at such a young age hardly seems compatible with article 23 of the Covenant, whereby no marriage shall be entered into without the free and full consent of the intending spouses.

The State party should amend its legislation to bring it into line with the provisions of articles 3, 23 and 24 of the Covenant.

(21) The Committee notes the promulgation of Ordinance No. 1016 of 13 November 1999, which facilitates the travel, departure and return of citizens. It remains concerned that many Syrians living abroad, as well as their children, have been denied a Syrian passport. This situation, which deprives them of the right to return to their own country, is incompatible with article 12, paragraph 4; the denial of a passport to children of exiled Syrians constitutes a violation of articles 24 and 26 of the Covenant. Moreover, the fact that many designated categories of nationals are still required to obtain an exit visa each time they wish to leave the country is a matter of concern to the Committee and constitutes a violation of article 12, paragraph 2, of the Covenant.

The State party should facilitate the return to the country of Syrian citizens wishing to do so and should eliminate the exit visa requirement as a general rule and require it only in individual cases that can be justified in relation to the Covenant.

(22) In the Committee's opinion, the discretionary power of the Minister of the Interior to order the expulsion of any alien, without safeguards, if security and the public interest so require poses problems with regard to article 13 of the Covenant, particularly if the alien entered Syrian territory lawfully and has obtained a residence permit. Protests lodged by the expelled alien with Syrian diplomatic and consular missions abroad are not a satisfactory solution in terms of the Covenant.

Before expelling an alien, the State party should provide him or her with sufficient safeguards and an effective remedy, in conformity with article 13 of the Covenant.

(23) The Committee remains concerned that the activities of human rights defenders and of journalists who speak out for human rights remain subject to severe restrictions. In this context, it refers to the case of Nizar Nayyuf, who in 1992 was sentenced to 10 years' imprisonment for his non-violent expression of opinions critical of the authorities. Such restrictions are incompatible with freedom of expression and opinion as provided for in article 19 of the Covenant.

The State party should protect human rights defenders and journalists against any restriction on their activities and ensure that journalists can exercise their profession without fear of being brought before the courts and prosecuted for having criticized government policy.

(24) The Committee notes the assurance given by the delegation that the provision adopted under article 38 of the Constitution, which subjects the expression of opinions to limitations such as "constructive criticism" and "the integrity of the country and the nation" without establishing precise criteria, has never been applied and may be repealed. It also notes the delegation's statement that the provision of the 1965 legislative decree which makes opposition to the aims of the revolution a political offence has fallen into disuse and has apparently never been applied. The Committee remains nonetheless concerned by numerous allegations it has received in this respect.

The State party should revise its legislation in this particular area.

(25) The Committee has noted the delegation's explanation that freedom of assembly is fully respected in Syria. It remains concerned, however, at the restrictions on the holding of public meetings and demonstrations (see articles 335 and 336 of the Penal Code). In the Committee's view, such restrictions exceed those authorized by article 21.

The Committee requests the State party to provide it with additional information on the conditions for authorizing public assemblies and, in particular, to indicate whether and under what conditions the denial of an authorization can be appealed.

(26) While noting the explanations provided by the delegation regarding the exercise of the right to freedom of association, the Committee is concerned at the absence of specific legislation on political parties and at the fact that only political parties wishing to participate in the political activities of the National Progressive Front, led by the Baath party, are allowed.

The Committee is also concerned at the restrictions that can be placed on the establishment of private associations and institutions (paragraph 307 of the report), including independent non-governmental organizations and human rights organizations.

> The State party should ensure that the proposed law on political parties is compatible with the provisions of the Covenant. It should also ensure that the implementation of the Private Associations and Institutions Act No. 93 of 1958 is in full conformity with articles 22 and 25 of the Covenant.

(27) The Committee remains concerned about the situation of a large number of persons of Kurdish origin who have entered Syria from neighbouring countries. It is also concerned about the fate of Kurds born in Syria whom the Syrian authorities treat either as aliens or unregistered persons and who encounter administrative and practical difficulties in acquiring Syrian nationality. The Committee considers this discriminatory situation to be incompatible with articles 24, 26 and 27 of the Covenant.

> The State party should take urgent steps to find a solution to the statelessness of numerous Kurds in Syria and to allow Kurdish children born in Syria to acquire Syrian nationality.

(28) The State party must ensure that its second periodic report and these concluding observations are disseminated widely.

(29) The State party should indicate within one year, in accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the measures it has taken or envisages to take to lift the state of emergency (para. 6) and submit the information requested on cases in which the Covenant has actually been invoked before the Syrian courts (para. 5), the number of death sentences passed since 1990, the number and identity of persons executed during that period, the dates of execution and the grounds for their sentence (para. 8). The State party should also submit information on disappeared persons, as well as on the problem of extrajudicial executions (para. 10). Within the same period of one year, it should provide additional information on the composition, the jurisdiction and procedures of military courts (para. 17). It should equally provide information on the measures taken to remedy the situation of statelessness of numerous Kurds in Syria.

(30) The Committee requests that the information relating to its other recommendations and to the Covenant as a whole should be included in the third periodic report of the Syrian Arab Republic, to be submitted by 1 April 2003.

82. **Netherlands**

(1) The Committee considered the third periodic report submitted by the Netherlands (CCPR/C/NET/99/3 and CCPR/C/NET/99/3/Add.1) at its 1928th, 1929th and 1930th meetings, held on 9 and 10 July 2001, and adopted the following concluding observations at its 1943rd and 1947th meetings, held on 19 and 23 July 2001.

### A. Introduction

(2) The Committee has examined the comprehensive and detailed report of the Netherlands covering events since the submission of its second periodic report in 1988. It regrets the long delay in submission of the final version of the report. While it appreciates the extensive information provided by the Delegation in respect of the European part of the Kingdom, it notes that the delegation was unable to respond to questions raised by Committee members on the human rights situation in the Netherlands Antilles and Aruba. This has unnecessarily complicated the possibility to engage in a meaningful dialogue on the implementation of the Covenant in these territories. However, the Committee appreciates the timely receipt of the missing responses in writing.

## THE EUROPEAN PART OF THE KINGDOM

### B. Positive aspects

(3) The Committee welcomes the establishment of an independent National Ombudsman, appointed by Parliament, whose authority is constitutionally anchored and whose mandate extends across national, provincial and municipal governments.

(4) The Committee also welcomes the establishment of the Equal Treatment Commission, set up by the Equal Treatment Act, as an independent body responsible for investigating and assessing cases of alleged discrimination.

### C. Principal subjects of concern and recommendations

(5) (a) The Committee discussed the issue of euthanasia and assisted suicide. The Committee acknowledges that the new Act concerning review procedures on the termination of life on request and assisted suicide, which will come into force on 1 January 2002, is the result of extensive public debate addressing a very complex legal and ethical issue. It further recognises that the new law seeks to provide legal certainty and clarity in a situation which has evolved from case law and medical practice over a number of years. The Committee is well aware that the new Act does not as such decriminalize euthanasia and assisted suicide. However, where a State party seeks to relax legal protection with respect to an act deliberately intended to put an end to human life, the Committee believes that the Covenant obliges it to apply the most rigorous scrutiny to determine whether the State party's obligations to ensure the right to life are being complied with (articles 2 and 6 of the Covenant).

(b) The new Act contains, however, a number of conditions under which the physician is not punishable when he or she terminates the life of a person, inter alia, on the "voluntary and well-considered request" of the patient in a situation of "unbearable suffering" offering "no prospect of improvement" and "no other reasonable solution". The Committee is concerned lest such a system may fail to detect and prevent situations where undue pressure could lead to these criteria being circumvented. The Committee is also concerned that, with the passage of time, such a practice may lead to routinization and insensitivity to the strict application of the requirements in a way not anticipated.

The Committee learnt with unease that under the present legal system more than 2,000 cases of euthanasia and assisted suicide (or combination of both) were reported to the review committee in the year 2000, and that the said committee came to a negative assessment only in three cases. The large numbers involved raise doubts whether the present system is only being used in extreme cases in which all the substantive conditions are scrupulously maintained.

(c) The Committee is seriously concerned that the new law is also applicable to minors who have reached the age of 12 years. The Committee notes that the law provides for the consent of parents or guardians of juveniles up to 16 years, while for those 16 and 18 years the parents' or guardian's consent may be replaced by the will of the minor provided that the minor can appropriately assess his or her interests in the matter. The Committee considers it difficult to reconcile a reasoned decision to terminate life with the evolving and maturing capacities of minors. In view of the irreversibility of euthanasia and assisted suicide, the Committee wishes to underline its conviction that minors are in particular need of protection.

(d) The Committee, having taken full note of the monitoring task of the review committee, is also concerned about the fact that it exercises only an ex post control, not being able to prevent the termination of life when the statutory conditions are not fulfilled. The State party should re-examine its law on euthanasia and assisted suicide in the light of these observations. It must ensure that the procedures employed offer adequate safeguards against abuse or misuse, including undue influence by third parties. The ex ante control mechanism should be strengthened. The application of the law to minors highlights the serious nature of these concerns. The next report should provide detailed information as to what criteria are applied to determine the existence of a "voluntary and well-considered request", "unbearable suffering" and "no other reasonable alternative". It should further include precise information on the number of cases to which the new Act has been applied and on the relevant reports of the review committee. The State party is asked to keep the law and its application under strict monitoring and continuing observation.

(6) The Committee is gravely concerned at reports that newborn handicapped infants have had their lives ended by medical personnel.

The State party should scrupulously investigate any such allegations of violations of the right to life (article 6 of the Covenant), which fall outside the law on euthanasia. The State party should further inform the Committee on the number of such cases and on the results of court proceedings arising out of them.

(7) While it acknowledges that the State party's Medical Research (Human Subjects) Act 1999 attempts to find a generally acceptable standard and to establish a permanent control system through the Central Committee for Medical Research Involving Human Subjects and the corresponding local committees accredited by the Central Committee, the Human Rights Committee considers aspects of this law to be problematic (article 7 of the Covenant). It is concerned at the general criterion whereby proportionality is assessed by balancing the risks of the research to the subject against the probable value of the research. The Committee considers

that this rather subjective criterion must be qualified by a limitation beyond which the risks are so great to the individual that no measure of expected benefit can outweigh them. The Committee is also concerned that minors and other persons unable to give genuine consent may be subject to medical research under certain circumstances.

The State party should reconsider its Medical Research (Human Subjects) Act in light of the Committee's concerns in order to ensure that even high potential value of scientific research is not used to justify severe risks to the subjects of research. The State party should further remove minors and other persons unable to give genuine consent from any medical experiments which do not directly benefit these individuals (non-therapeutic medical research). In its next report, the State party should inform the Committee of the steps taken and provide it with detailed statistics.

(8) The Committee remains concerned that, six years after alleged involvement of members of the State party's peacekeeping forces in the events surrounding the fall of Srebrenica, Bosnia-Herzegovina, in July 1995, the responsibility of the persons concerned has yet to be publicly and finally determined. The Committee considers that in respect of an event of such gravity it is of particular importance that issues relating to the State party's obligation to ensure the right to life be resolved in an expeditious and comprehensive manner (articles 2 and 6 of the Covenant).

The State party should complete its investigations as to the involvement of its armed forces in Srebrenica as soon as possible, publicise these findings widely and examine the conclusions to determine any appropriate criminal or disciplinary action.

(9) While welcoming the establishment of a network of advisory centres to deal with child abuse, the Committee is concerned at the ongoing high numbers of reported incidents (articles 7 and 24).

The State party should continue to develop strategies designed to prevent child abuse, and investigate where it has occurred. It should also standardize the systems and measures employed by its advisory centres to facilitate these ends.

(10) While welcoming the recent appointment of an independent National Rapporteur on Trafficking in Persons endowed with appropriate investigative and research powers, the Committee remains concerned at on-going reports of sexual exploitation of significant numbers of foreign women in the State party (articles 3, 8 and 26 of the Covenant).

The State party should ensure that the National Rapporteur is equipped with all means necessary to achieve real and concrete improvement in this area. The State party should inform the Committee of progress made in this respect in the next report.

(11) The Committee appreciates the new instructions issued by the Immigration and Naturalization Service aimed at drawing the competent officials' attention to specific aspects of female asylum seekers' statements peculiar to their gender. However, it remains concerned that a well-founded fear of genital mutilation or other traditional practices that infringe the physical

integrity or health of women (article 7 of the Covenant) do not always result in favourable asylum decisions, for example when genital mutilation, despite a nominal legal prohibition, remains an established practice to which the asylum seeker would be at risk.

The State party should make the necessary legal adjustments to ensure that the female persons concerned do enjoy the required protection under article 7 of the Covenant.

(12) The Committee is gravely concerned at the scope afforded to the use of anonymous witnesses in the State party's criminal procedure. The Committee notes that use is made of hearing witnesses in the preliminary examination, prior to the trial, without the accused, counsel or the prosecutor being present. The identity is accordingly known only to the examining magistrate, and is subsequently unknown even to the trial judge. While not excluding the use of anonymous witnesses in appropriate instances, the Committee considers that this practice is too broad and that it raises difficulties in terms of article 14 of the Covenant.

The State party should make greater efforts to safeguard the right of a defendant to a fair trial through means which, while protecting witness identity in appropriate and necessary cases, provide a greater opportunity for the evidence to be tested and contested. The State party should also provide further information on how a decision that a witness should be anonymous is reached, and what appeals against or reviews of such a decision are possible. The State party should show why ordinary means of protecting witnesses, such as police security or witness protection and relocation programmes, are considered inadequate in cases where anonymity is allegedly required on account of threats to the witness.

(13) The Committee is concerned that the State party's law provides for a maximum of 3 days and 15 hours which may elapse between a suspect's arrest and his or her being brought before a judge. The Committee considers that such a period does not satisfy the requirement in article 9, paragraph 3, to be "promptly" brought before a judicial authority.

The State party should amend this aspect of its criminal procedure to comply with the requirements of the Covenant.

(14) The Committee welcomes the State party's recent attempts through legislation and policy to enhance the participation of ethnic minorities in the labour market, including incentives to the private sector to expand the proportion of the workforce made up of ethnic minorities. It notes, however, that these efforts to secure the rights guaranteed under article 27 of the Covenant have yet to show significant results. The Committee is also concerned that children of ethnic minorities are under-represented at higher education levels. The Committee wishes to receive further information of the results in practice that the State party's measures in this regard are aimed at achieving.

## THE NETHERLANDS ANTILLES

### D. Positive aspects

(15) The Committee welcomes the comprehensive revision of the Netherlands Antilles Civil Code, removing a large variety of elements discriminating against women. The Committee is also pleased to note the amendments to the Country Ordinances on Income Tax and on Wages and Salaries Tax placing spouses on equal footing. The Committee notes the establishment of a Prisons Supervisory Board with the power to make binding recommendations on complaints by inmates.

### E. Principal subjects of concern and recommendations

(16) The Committee is concerned as to the breadth of article 137 of the Constitution which regulates the imposition of a state of emergency without taking into account the limitations imposed by article 4 of the Covenant for exceptional circumstances endangering the life of the nation.

> The State party should ensure that its rules on states of emergency are in full conformity with all the requirements of the Covenant.

(17) Despite physical improvements which have been made to the prison facilities, the Committee remains concerned by unlawful conduct on the part of the staff, combined with their failure to control adequately the behaviour of inmates. These problems threaten the capacity of the competent authorities to properly administer the penitentiary system and to respect the rights of inmates (articles 7 and 10).

> The State party should undertake the necessary steps to ensure that the prison staff act with the highest professional standards in a manner that ensures that the rights of all inmates are respected.

(18) While welcoming the establishment of a Police Conduct Complaints Committee to receive complaints from members of the public and the establishment of a committee to control the integrity of the police, the Human Rights Committee is concerned that the said authorities do not have the capacity to issue binding determinations. It considers that to act effectively and independently of the Executive, of which the police is a part, the authorities should have the competence to issue binding conclusions as to appropriate remedies or disciplinary measures as the case may be.

> The State party should review the limitations on the Authority's powers in the light of the Committee's observations.

(19) The Committee is concerned that there is a sizeable backlog in the revision of outdated and obsolete legislation, in particular in the provisions of the Antillean Criminal Code. The Committee considers that, especially in the area of criminal law, legal certainty and clarity are of particular importance in enabling individuals to determine the extent of liability for specific conduct.

The State party should proceed with the proposed revision of the Criminal Code at the earliest opportunity. In particular, references to the death penalty should be removed.

(20) The Committee is equally concerned by the fact that the legal rules on the right of peaceful assembly contain a general requirement of prior permission from the local police chief.

The State party should ensure that the right of peaceful assembly may be exercised by all in strict conformity with the guarantees of article 21 of the Covenant.

(21) The Committee notes with regret that the distinctions between legitimate and illegitimate children who have not been recognized by their father, and who accordingly suffer disadvantage under inheritance laws, have not been eliminated.

The State party should remove all distinctions between legitimate and illegitimate children in compliance with articles 24 and 26 of the Covenant.

## ARUBA

### F. Positive aspects

(22) The Committee commends the State party for the introduction of the State Ordinance Administrative Procedure providing a special objection and judicial appeal mechanism against any administrative decision. The Committee also welcomes fundamental safeguards against unlawful actions by the authorities contained in the revised Code of Criminal Procedure (1997), notably the availability of legal assistance beginning with a suspect's initial contact with the criminal justice authorities. It also appreciates the establishment of universal jurisdiction for the crime of torture. It further welcomes the increased participation of women in Aruba's political life and in the workforce. It also commends the achievement by women of at least as high an educational level as men.

### G. Principal subjects of concern and recommendations

(23) The Committee is concerned to ensure that domestic workers, who are often particularly vulnerable to exploitation as non-Aruban nationals, should have strengthened protection under Aruba's labour laws in order to achieve compliance with the provisions of article 26 of the Covenant. A formal right to sue for breach of contract may well be insufficient in the circumstances of the specific employer-employee relationship.

The State party should consider the most appropriate way to ensure adequate legal protection for domestic workers, for example by extending the provisions of the Labour Ordinance to cover this class of workers.

(24) The Committee is disturbed that the State party has still not put in place an appropriate police complaints authority in Aruba, after the State party had admitted that the system established under the Police Complaints Decree did "not function properly in practice" (articles 7 and 26 of the Covenant).

The State party should ensure that the necessary measures to amend and bring into force the revised Decree are taken.

(25) The Committee is concerned that despite the equal protection clause of the Aruban Constitution, the Country Ordinance on Admittance and Deportation still legally distinguishes between the legitimate family of a man born in Aruba with Netherlands nationality and the legitimate family of a woman born in Aruba with Netherlands nationality.

Although the provision is said not to be applied in practice, the State party should remove this differentiation which is in breach of article 26.

(26) The State party should widely publicize the text of its third periodic report, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

(27) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the State party's law on euthanasia (para. 5), the situation on post-natal infanticide (para. 6), the investigation of events surrounding the fall of Srebrenica (para. 7), as well as, for the Netherlands Antilles, the difficulties concerning its prison system (para. 17), and, for Aruba, the implementation of a functioning police complaints authority (para. 24). The Committee requests that information concerning the remainder of its recommendations be included in the fourth periodic report to be presented by 1 August 2006.

## 83. Czech Republic

(1) The Committee examined the initial report submitted by the Czech Republic (CCPR/C/CZE/2000/1) at its 1931st, 1932nd, and 1933rd meetings, held on 11 and 12 July 2001, and adopted the following concluding observations at its 1949th meeting, held on 24 July 2001.

### A. Introduction

(2) The Committee has examined the detailed and comprehensive report of the Czech Republic, covering events since its establishment as one of the successor states of the Czech and Slovak Federative Republic on 1 January 1993. The Committee is grateful to the Delegation of the Czech Republic for its frank account of recent developments and problems encountered in the implementation of the rights provided for in the Covenant, which was highly instructive and enhanced the quality of the discussion. It further commends the delegation for supplying it with a great deal of information about the legal situation in the Czech Republic, but regrets that it was not provided with more information with regard to the implementation of Covenant rights in practice.

## B. Positive aspects

(3) The Committee commends the State party for its commitment to rebuilding a democratic legal order and undertaking the process of bringing its legislation into harmony with its international obligations, since the transition to democracy which started in 1989. This includes the serious attempt by the State party to adopt a new rights-based Constitution and Charter of Fundamental Rights and Freedoms that embodies internationally-recognized human rights.

(4) The Committee welcomes the fact that capital punishment was abolished in 1990 and encourages the Czech Republic to accede to the Second Optional Protocol to the Covenant.

## C. Principal subjects of concern and recommendations

(5) While the Covenant has a status superior to domestic legislation, not all rights stipulated in the Covenant have been incorporated in the Charter of Fundamental Rights and Freedoms, which leads to confusion as to the full protection of all Covenant rights. It is also not clear as to what is the relationship between the Covenant and the Charter and other parts of the constitutional order (art. 2).

> The State party should clarify the relationship between the Covenant rights not included in the Charter and the constitutional order, so as better to ensure full implementation of all Covenant rights in all circumstances.

(6) The Committee is concerned at the apparent absence of procedures for dealing with the implementation of the Views of the Committee under the Optional Protocol. The Committee deeply regrets the position adopted by the State party in the cases of Simunek (516/1992) and Adam (586/1994), regarding the restitution of property or compensation under Act 87/91. The Committee also regrets the State party's response to its decision that the pre-condition of Czech citizenship to restitution or compensation under Act 87/91 was discriminatory and in violation of article 26 of the Covenant. A decision by the Constitutional Court on the constitutionality of the relevant law cannot exonerate the State party from its obligations under the Covenant (article 2; Optional Protocol, articles 1 and 4).

> The State party should reconsider its present law regarding the right to seek restitution of property or compensation. It should also put in place procedures to deal with views of the Committee under the Optional Protocol. In both cases, the Committee wishes to be informed about the outcome of this recommendation.

(7) The Committee is concerned about the lack of independent mechanisms for monitoring the practical implementation of rights. While welcoming the creation of the institution of the Ombudsman for investigating individual complaints, the Committee notes that his or her powers are limited to recommendations covering the public sector. Furthermore, the Commissioner on Human Rights is a government official and the Council for Human Rights an advisory body; they have no mandate to deal with individual complaints relating to human rights (art. 2).

The State party should adopt measures to establish effective independent monitoring mechanisms for implementation of Covenant rights, particularly in the area of discrimination.

(8) The Committee is deeply concerned about discrimination against minorities, particularly the Roma. Although the delegation acknowledged the problem, the Committee was not provided with detailed information regarding discrimination in employment, education, health care, housing, penitentiaries, social programmes and in the private sphere, as well as participation in public life. The steps taken by the State party to improve the socio-economic condition of the Roma do not appear to be adequate to address the situation and de facto discrimination persists (arts. 26, 27).

In order to ensure compliance with articles 2 and 26 of the Covenant, the State party should take all necessary measures to eliminate discrimination against members of minorities, particularly the Roma, and to enhance the practical enjoyment of their rights under the Covenant; full details on policies adopted and their results in practice should be provided to the Committee.

(9) The Committee is particularly concerned about the disproportionate number of Roma children who are assigned to special schools designed for mentally disabled children, which would seem to indicate the use of stereotypes in the placement decisions in contravention of article 26 of the Covenant and which make it difficult, if not impossible, to secure admission to secondary schools (art. 26).

The State party should take immediate and decisive steps to eradicate the segregation of Roma children in its educational system by ensuring that placement in schools is carried out on an individual basis and is not influenced by the child's ethnic group. Where needed, the State party should also provide special training to Roma and other minority children to secure, through positive measures, their right to education.

(10) While noting various recent amendments to legislation to combat discrimination in employment, the Committee is concerned at the lack of monitoring implementation of this legislation. The Committee is also concerned at the high rate of unemployment of Roma, bordering on 70 per cent when the general rate of unemployment is 10 per cent. The Committee is also concerned at the absence of legislation prohibiting discrimination in other fields, such as educational and health care systems, housing and the provision of goods and services (arts. 2, 3, 26).

The State party should adopt measures to ensure the effectiveness of existing legislation against discrimination. It should also adopt further legislation in fields not covered by the current legislation in order to ensure full compliance with articles 2.3 and 26 of the Covenant. The State party should also make greater efforts to provide training to Roma in order to equip them for suitable employment and create job opportunities for them.

(11) While noting the concern expressed by the State party about racial violence, and the statement as to the decrease of such acts and the increase in prosecutions, the Committee remains concerned at violence and harassment by some groups with respect to the Roma minority, and the failure on the part of the police and judicial authorities to investigate, prosecute and punish hate crimes (arts. 2, 20, 26).

The State party should take all necessary measures to combat racial violence and incitement, provide proper protection to Roma and other minorities, and ensure adequate investigation and prosecution of cases of racial violence and incitement to racial hatred.

(12) The Committee is concerned at the low participation of women in political life, as well as their inadequate representation in higher levels of administration. The Committee regrets that the delegation was not in a position to provide the Committee with information relating to the representation of women in the private sector (arts. 3, 26).

The State party should adopt measures to increase the participation of women in the public and private sectors, if necessary through appropriate positive measures, in order to give effect to its obligations under articles 3 and 26.

(13) The Committee is deeply concerned about reports of trafficking of women, with the State party being a country of origin and transit as well as a recipient country (arts. 3, 8).

The State party should take resolute measures to combat this practice, which constitutes a violation of several Covenant rights, including article 3 and the right under article 8 to be free from slavery and servitude. The State party should also strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into its territory for the purpose of prostitution. Strong measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an opportunity to give evidence against the person responsible in criminal or civil proceedings. The Committee wishes to be informed of the measures taken and their result.

(14) The Committee is concerned about reports of domestic violence and regrets that no statistics were provided by the State party. While welcoming public information campaigns and training of police, the Committee is concerned about the absence of specific protection in law and in practice (arts. 3, 9, 26).

The State party should adopt a policy and a legal framework necessary to combat domestic violence; specifically, it should provide a framework for protection of a spouse who is subjected to violence or threats of violence.

(15) The Committee is deeply concerned about the persistent allegations of police harassment, particularly of the Roma minority and aliens, which the delegation explained as resulting from lack of sensitivity rather than harassment (arts. 2, 7, 9, 26).

The State party should take firm measures to eradicate all forms of police harassment of aliens and vulnerable minorities.

(16) The Committee is concerned that complaints against police are handled by an internal police inspectorate, while criminal investigations are handled by the Interior Ministry which has overall responsibility for police. This system lacks objectivity and credibility and would seem to facilitate impunity for police involved in human rights violations (arts. 2, 7, 9).

The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by the police.

(17) The Committee is concerned that the period of up to 48 hours before being brought before a court is excessive, and that access to a lawyer is not available during that period to a suspect who cannot afford one (art. 9).

The State party should ensure that detained persons are brought promptly before a court and that access to a lawyer is available from the moment of deprivation of liberty.

(18) The Committee is concerned about the scope and length of pre-trial detention, the average length of which is inordinately high. The system, as it is applied, would seem to raise issues of compatibility with article 9, paragraph 3. The figures provided by the State party on the number of cases in which the prosecution's request for detention is accepted by the courts casts doubts on the effectiveness of the system of review (art. 9).

The State party should ensure that its law and practice are in strict compliance with the requirements of article 9 of the Covenant; the State party is requested to provide further information on the implementation of the new Code of Criminal Procedure in its next periodic report.

(19) The Committee is concerned about overcrowding in prisons (art. 10).

The State party should take measures to overcome overcrowding in prisons and to ensure compliance with the requirements of article 10. Information should be provided on prison capacity and the actual prison population so as to permit the Committee to assess the level of overcrowding.

(20) While acknowledging the change in the Code of Criminal Procedure which will abolish unconditional prison sentences under the system of punishment orders, the Committee remains concerned that this system of punishment orders raises serious issues under article 14, particularly with regard to the right to defence.

The State party should ensure that the rights under article 14 of persons on whom punishment orders are imposed are fully respected.

(21) The Committee is concerned that the system of legal aid in the State party does not ensure that legal aid will be made available in all cases required under article 14 (3) (d) of the Covenant.

The State party should review its system of legal aid in order to ensure that legal assistance will be available to all defendants in criminal cases where the interests of justice so require.

(22) The Committee takes note of changes in the religious registration requirements, but remains concerned about the potentially different treatment the law continues to accord to different religions on the basis of registration and non-registration (arts. 18, 26).

The State party should provide further information in its next periodic report.

(23) The Committee is deeply concerned at reports of sexual abuse of children, including child pornography. The Committee is pleased to note that NGOs are providing assistance in dealing with the problem of child abuse and that it is also taking steps to create public awareness of the problem. It welcomes the steps taken by the State party to have special accommodation for abused children so that they can be rehabilitated (art. 24).

The State party should adopt effective measures for combating sexual abuse of children including child pornography and for rehabilitating abused children, so as to ensure compliance with article 24.

(24) The Committee is concerned that the Screening Act is applied without consideration of the individual circumstances of each person. This raises serious issues under article 25 of the Covenant.

The State party must ensure that the Screening Act is not enforced in a blanket manner and is not used as a mechanism to deny persons access, on general terms of equality, to the public service.

(25) The Committee is concerned by the apparently low level of awareness amongst the public of the provisions of the Covenant and the Optional Protocol procedure (art. 2).

The State party should publicize the provisions of the Covenant and the availability of the individual complaint mechanism provided in the Optional Protocol so as to create public awareness.

(26) The State party should widely publicize the present examination of its initial report by the Committee, and, in particular, these concluding observations.

(27) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the setting up of effective procedures for the implementation of views adopted by the Committee (para. 6), special schools (para. 9) and the investigation of

complaints against police officials (para. 16). The Committee requests that information concerning the remainder of its recommendations be included in the second periodic report to be presented by 1 August 2005.

84. **Monaco**

(1) The Committee considered the initial report of Monaco (CCPR/C/MCO/99/1) at its 1935th and 1936th meetings, held on 13 July 2001, and adopted the following observations at its 1949th meeting on 24 July 2001.

### A. Introduction

(2) The Committee commends the State party for its timely submission of its report, which contains basic information on its domestic legislation relating to the implementation of the Covenant. It regrets, however, that the report is so brief and, in particular, lacking in information on jurisprudence and the practical implementation of the Covenant and on factors or difficulties that prevent or impede that implementation. It nevertheless takes note of the useful oral clarifications provided by the delegation during the consideration of the report.

### B. Positive aspects

(3) While noting that the death penalty has been abolished in the State party for many years, the Committee welcomes the State party's ratification of the second Optional Protocol to the Covenant in 2000.

### C. Principal subjects of concern and recommendations

(4) The Committee is concerned about the existence of six interpretative declarations and one reservation made by the State party when ratifying the Covenant.

> The State party should reduce the number of those interpretative declarations. The Committee encourages it to review them, particularly those that have become or are becoming obsolete and unnecessary in the light of developments that have taken place or are taking place in the State party, especially with regard to articles 13, 14, 19 and 25 (c), of the Covenant.

(5) The Committee notes the lack of clarity concerning the position occupied by the Covenant in the State party's legal system.

> It requests the State party to explain in its next report exactly what status the Covenant has in domestic law so that it can be determined whether the Covenant can be invoked directly before the courts and which instrument prevails when there is a conflict with domestic law, including the Constitution.

(6) The Committee notes that there is no national human rights commission and that there are no plans to establish one.

The State party should consider establishing such an independent institution for the protection of human rights.

(7) The Committee is concerned that many legislative measures that have become obsolete and inconsistent with the Covenant remain in force (article 2 of the Covenant).

It considers that the State party should bring its legislation into line with the provisions of the Covenant.

(8) The Committee regrets the lack of information in the initial report on the representation of women in public and private life (articles 3 and 26 of the Covenant).

The State party should include detailed information in its next report so that the status of women may be assessed more accurately in the light of the Covenant and, in particular, the principle of non-discrimination based on sex.

(9) The Committee expresses its concern about the discriminatory nature of certain provisions of the Civil Code, including article 182, which states that the husband is the head of the family; article 196, which gives husbands the right to choose the couple's place of residence; and article 301, which vests the father with parental authority over the children (articles 3, 23 and 26 of the Covenant).

The State party should repeal these discriminatory provisions of the Civil Code and adopt the appropriate legislative provisions to ensure de facto equality between men and women.

(10) The Committee is concerned about the discriminatory legal status of women insofar as the transmission of Monegasque nationality to children is concerned (articles 3 and 26 of the Covenant).

The State party should adopt legislation giving men and women the same right to transmit nationality to children.

(11) The Committee expresses its concern about the legal status of children born out of wedlock (article 24 of the Covenant).

The State party should adopt appropriate legislation to ensure that children born out of wedlock enjoy the same rights as other children.

(12) The Committee is concerned that Monegasque legislation discriminates between boys and girls in that the legal age for marriage is 15 years for girls, but 18 years for boys (articles 23 and 26 of the Covenant).

The State party should amend its legislation to ensure that girls and boys are treated equally by making the legal age of marriage 18 years, regardless of sex.

(13) The Committee regrets that the State party's legislation does not provide for any specific penalty for racial discrimination (article 26 of the Covenant).

The State party should adopt legislation providing for specific penalties for racial discrimination.

(14) The Committee notes the absence of any specific mention of the presumption of innocence in the State party's legislation (article 14 of the Covenant).

The State party should explicitly incorporate this principle in its legislation and take all other measures that this implies, particularly where pre-trial detention is concerned.

(15) The Committee expresses its concern about the inadequacy of the guarantees available to persons in police custody, particularly the right of such persons to legal assistance (article 9 of the Covenant).

The State party should take appropriate legislative measures to ensure that the rights of persons in police custody are protected and, specifically, that they are allowed to obtain the assistance of a lawyer.

(16) The Committee expresses its concern that no justification is given for the administrative measures relating to the expulsion of foreigners (article 13 of the Covenant).

The State party should assume the obligation of justifying administrative decisions, particularly those relating to expulsions.

(17) While noting the special status of Monegasques, who are in a numerical minority in the Principality of Monaco, the Committee draws attention to the distinction made in law between Monegasques and non-Monegasques, particularly in the area of employment and where the exercise of the freedoms of association and assembly is concerned (articles 21, 22 and 26 of the Covenant).

The State party should ensure that such distinctions, which in certain cases and circumstances may justify differences in treatment based on objective and reasonable criteria, do not take the form of discrimination. The Committee also recommends that naturalization should be granted on the basis of objective criteria and within a reasonable time-frame, especially for persons who have lived in Monaco for many years.

(18) The Committee is concerned that criminal legislation continues to provide for exile (article 12 of the Covenant).

The State party should repeal these provisions, which are totally incompatible with article 12, paragraph 4, of the Covenant.

(19) The Committee takes note of the exceptions to freedom of expression which are provided for by the law of the State party and are justified by the protection of individual rights or the safeguarding of general interests (article 19 of the Covenant).

The State party should take steps to ensure that these restrictions on freedom of expression are consistent with those provided for in article 19, paragraph 3, of the Covenant and, in particular, that they are strictly necessary in terms of the purpose they are intended to serve.

(20) The Committee notes the absence of any detailed information on freedom of religion or belief and manifestations thereof (article 18 of the Covenant).

The State party should include data in its next report which will enable the Committee to assess the situation of religious communities or communities of faith (in the area of education, for example), particularly from the standpoint of the principle of non-discrimination.

(21) The Committee notes that the State party has taken steps to ensure the dissemination of the initial report to the Monegasque population after its consideration by the Committee (article 2 of the Covenant).

The State party should ensure that its next periodic report is disseminated prior to its consideration by the Committee so that the comments of the population and non-governmental organizations may be obtained beforehand.

(22) While noting the existence of human rights programmes for the police, the Committee regrets the absence of specific information on human rights training for members of the judiciary and other civil servants (article 2 of the Covenant).

The State party include detailed information in its next report on efforts to educate civil servants in the implementation of the rights provided for in the Covenant.

(23) The state party should transmit within one year, in accordance with rule 70, paragraph 5, of the Committee's rules of procedure, relevant information on the implementation of the Committee's recommendations on the non-justification of administrative measures relating to the expulsion of foreigners (para. 16) and exile (para. 18). The Committee requests the State party to include information in its next report, which is to be submitted by 1 August 2006, on the other recommendations it made and on the Covenant as a whole.

85. **Guatemala**

(1) The Human Rights Committee considered the second periodic report of Guatemala (CCPR/C/GTM/99/2 and HRI/CORE/1/Add.47) at its 1994th, 1941st and 1942nd meetings held on 17 and 18 July 2001 (see CCPR/C/SR.1940, 1941 and 1942) and adopted the following comments at its 1954th meeting held on 26 July 2001.

### A. Introduction

(2) The Committee welcomes the State party's second periodic report, submitted with minimal delay, and the delegation's willingness to stay in contact with the Committee. However, the Committee regrets that this report contains information on general legislation in Guatemala, but scarcely refers to the situation regarding the implementation of the Covenant in practice and the difficulties encountered in its implementation. The Committee welcomes the fact that the delegation referred to this matter in its statements. The Committee appreciates the information provided by the delegation on various issues, which has enabled it to have a clearer idea of the general human rights situation in the State party.

### B. Positive aspects

(3) The Committee welcomes the fact that the State party has ratified the first Optional Protocol to the International Covenant on Civil and Political Rights with effect from 28 February 2001.

(4) The Committee is pleased that efforts have been made to provide additional resources for the Office of the Human Rights Procurator and for the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH), thus enabling them better to carry out their work.

(5) The Committee is pleased with the information received concerning the dismantling of the civilian self-defence patrols and the measures taken to professionalize the police forces.

(6) The Committee welcomes the positive legislative measures adopted on behalf of women and the establishment of various bodies intended to promote and protect women's rights.

(7) The Committee takes note of the recent measures adopted to establish a career structure for the judiciary.

(8) The Committee welcomes the State party's recognition of "institutional responsibility", as endorsed by the President of the Republic, for the Las Dos Erres massacre and other serious violations of human rights which occurred during the civil war for the purpose of being able to provide financial compensation to the victims and guarantee the prosecution of those responsible.

(9) The Committee considers it a positive factor that the administration of justice has been extended to many municipalities in the country through the appointment of justices of the peace, some of whom are bilingual and who have criminal jurisdiction.

## C. Subjects of concern and recommendations

(10) In ratifying the Covenant the State party accepted the obligations contained in article 2, paragraphs 1 and 2, to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant and to take the necessary steps to adopt, if they do not already exist, measures to give effect to those rights. The Committee is concerned about the State party's claim that the principles of the Constitution prevent it from giving effect to the provisions of the Covenant and, for example, about the fact that personal jurisdiction has been maintained for members of the military and some rights of members of indigenous communities are not being recognized.

The State party should not put forward the limitations of its Constitution as a reason for non-compliance with the Covenant, but should draw up the necessary reforms to achieve such compliance.

(11) The Committee is concerned about the wide variety of possible states of emergency listed in the Constitution. The possibility of suspending article 5 of the Constitution during states of exception does not appear to be compatible with the Covenant, since it suspends in general terms the right of the individual to do what the law does not prohibit and not to be compelled to obey illegal orders. Likewise, the Committee is concerned that the state of exception declared in June 2001 has not been duly notified to the other States parties through the intermediary of the Secretary-General of the United Nations.

The State party should ensure that its constitutional provisions for emergency situations are compatible with article 4 of the Covenant. It should also comply with the obligation to notify the other States parties through the intermediary of the Secretary-General of the United Nations in all cases when an emergency situation is declared and to inform them of the provisions from which it has derogated and of the reasons for the derogation.

(12) The Committee is disturbed that the absence of a State policy intended to combat impunity has prevented the identification, trial and punishment of those responsible for violations of article 6 and the payment of compensation to the victims. The Committee is concerned that delays in and the shortcomings of legal procedure and the failure of the authorities to comply with the decisions and orders of the courts have strengthened the perception by the public that justice is not being done.

The State party should:

(a) Strictly apply the National Reconciliation Act, which explicitly excludes crimes against humanity from amnesty;

(b) Set up an appropriate independent body to investigate disappearances;

(c) Provide adequate compensation for the victims of human rights violations.

(13) The Committee is gravely concerned about reports of human rights violations, particularly gross and systematic violations of the right to life, liberty and security of person. It is especially concerned about reports of disappearances in the State party, both the most recent reports and those in the past. The information supplied by the delegation that all such situations are being investigated is not satisfactory.

Taking into account the provisions of articles 6, 7 and 9 of the Covenant, the State party should give special priority to investigating and bringing to justice the perpetrators of human rights violations, including police and military personnel. The perpetrators of such acts must be tried and punished; mere separation from service or dismissal from the army is not sufficient. The State party should also take all necessary measures to prevent the occurrence of such acts.

(14) The Committee's deep concern also extends to the many reports of, and the State party's failure to provide answers about, extrajudicial executions allegedly carried out by former members of the military and paramilitary forces and attributed to ordinary criminals. These acts are all contrary to article 6 of the Covenant.

The State party should conduct investigations to identify those responsible for extrajudicial executions and bring them to justice. It should also take the necessary measures to prevent the occurrence of such violations of articles 6 and 7 of the Covenant.

(15) The Committee is also concerned about the information received on the traffic in children separated from their parents, a situation which has still not yet been clarified.

The State party should conduct investigations to identify those responsible for the traffic in children and bring them to justice. It should take the necessary measures to prevent the occurrence of such violations of articles 6, 7 and 24 of the Covenant. It should also take the appropriate measures to comply with the provisions of international instruments on child labour.

(16) Despite the efforts made by the authorities through workshops to raise public awareness, the Committee is deeply concerned about reports of lynchings of members of the judiciary in breach of articles 6 and 7 of the Covenant and about the apparent delay by the State party in reacting to such incidents.

The State party has the obligation to ensure the full protection of all authorities, especially their security during the exercise of their judicial functions.

(17) The Committee is concerned about the application of the death penalty and, in particular, about the increase in the number of crimes carrying that penalty, its application having been extended to abduction not resulting in death, contrary to the provisions of the Covenant.

The State party should limit the application of the death penalty to the most serious crimes and restrict the number of crimes carrying that penalty in accordance with article 6, paragraph 2, of the Covenant. The State party is invited to move towards the full abolition of the death penalty.

(18) The Committee is concerned about the elimination, by the Act of 12 May 2001, of the right, for persons sentenced to death, to seek pardon or commutation of the sentence, as recognized in article 6, paragraph 4, of the Covenant. It takes note of the information supplied by the delegation that, despite the existence of that Act, the President of the Republic has exercised the right to grant pardon on the basis of the precedence of international treaties over ordinary laws.

The State party should guarantee any person sentenced to death the right to seek pardon or commutation of sentence by bringing the legislation into line with the obligations of the Covenant and adopting provisions to ensure that the right to seek pardon may be exercised.

(19) The criminalization of all abortion, with the severe penalties imposed by the legislation in force except where the mother's life is in danger, gives rise to serious problems, especially in the light of unchallenged reports of the serious impact on maternal mortality of clandestine abortions and the lack of information on family planning.

The State party has the duty to adopt the necessary measures to guarantee the right to life (art. 6) of pregnant women who decide to interrupt their pregnancy by providing the necessary information and resources to guarantee their rights and amending the legislation to provide for exceptions to the general prohibition of all abortions, except where the mother's life is in danger.

(20) The wide jurisdiction of the military courts to hear all cases involving the trial of military personnel and their powers to decide cases that belong to the ordinary courts contribute to the impunity enjoyed by such personnel and prevent their punishment for serious human rights violations, as the State party recognized when including the amendments not adopted in the 1999 referendum.

The State party should amend the law to limit the jurisdiction of the military courts to the trial of military personnel who are accused of crimes of an exclusively military nature (articles 6, 7, 9 and 14 of the Covenant).

(21) The Committee notes with concern that members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, are being intimidated, threatened with death and even killed; the lawful exercise of their functions is thus being seriously hampered (articles 6, 7 and 9 of the Covenant). The Committee regrets that effective measures to prevent the repetition of such acts have still not been taken.

The State party should take all necessary preventive and protective measures to ensure that the members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, can carry out their functions without intimidation of any kind.

(22) The Committee is concerned about the large percentage of prisoners held in pre-trial detention. This means that a large number of persons accused of crimes remain in pre-trial detention for long periods, pending the completion of the criminal proceedings against them, contrary to article 9, paragraph 3, and article 14, paragraph 2, of the Covenant.

The State party should continue to take all necessary measures to reduce the number of persons in pre-trial detention and the period during which they are detained.

(23) The Committee regrets the lack of specific information on the provisions governing detention, especially on the point at which the prisoner has access to a lawyer, a doctor, an interpreter, etc.

The State party should provide this information so that the Committee can assess its compatibility with the requirements set out in articles 9 and 14 of the Covenant.

(24) The Committee is concerned about the continued existence of a legal provision exempting a rapist from any penalty if he marries the victim and about the continued requirement in the legislation that a woman must be "honest" for that offence to be held to have been committed.

The State party should immediately repeal this legislation, which is incompatible with articles 3, 23, 26 and 2 (3) of the Covenant.

(25) The Committee is concerned that women do not participate enough in political life, the judiciary and other sectors and that the information provided by the State party is not detailed enough to enable the Committee to evaluate either the progress made or the problems that continue to exist in this regard.

In order to comply with articles 3, 25 and 26, the State party should take appropriate measures to improve participation by women, through affirmative action programmes, if necessary, and to inform the Committee of the results of such programmes.

(26) The Committee deplores the situation of street children, which appears to be getting worse. These children run the greatest risk of sexual violence and are vulnerable to sexual trafficking.

The State party should take effective measures both to protect and rehabilitate street children, pursuant to article 24 of the Covenant, including measures to put an end to sexual exploitation and child pornography, and to punish those found guilty of any kind of violence against minors.

(27) The Committee is concerned about the situation of children in the State party and, in particular, about the postponement of the entry into force of the Juvenile Code, which was adopted and promulgated, but then had its entry into force deferred.

The State party should promulgate a Juvenile Code that guarantees minors the enjoyment of all their rights pursuant to article 24 of the Covenant.

(28) The Committee is concerned that the laws in force on defamation may be used to restrict criticism of the Government or public officials.

The State party should reform the legislation on defamation to ensure a proper balance between the protection of a person's reputation and freedom of expression (article 19 of the Covenant).

(29) Even though the Committee recognizes that the State party has made efforts to improve the situation of members of indigenous communities, it regrets that it has not been possible to adopt legislation designed to guarantee the full enjoyment of all their rights under the Covenant, including the restitution of communal lands, the elimination of discrimination in employment and education and participation in other areas of the life of society.

The State party should continue its efforts to guarantee members of indigenous communities the enjoyment of all the rights recognized by article 27 of the Covenant and adopt comprehensive legislation for this purpose. It should also ensure that the implementation of this legislation improves the situation of members of indigenous communities in practice and not only on paper.

(30) The State party should widely publicize the text of its second periodic report and these concluding observations.

(31) The State party should, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, furnish within one year information on any action it has taken in the light of the Committee's recommendations on disappearances and extrajudicial executions (paras. 12-15 of these observations) and on pre-trial detention (para. 23). The Committee requests that the information on the remainder of its recommendations should be included in the third periodic report, due to be submitted by 1 August 2005.

## 86. Democratic People's Republic of Korea

(1) The Committee considered the second periodic report of the Democratic People's Republic of Korea (CCPR/C/PRK/2000/2) at its 1944th, 1945th and 1946th meetings, held on 19 and 20 July 2001, and adopted the following concluding observations at its 1953rd meeting, held on 26 July 2001.

### A. Introduction

(2) The Committee welcomes the submission of the second periodic report, which contains detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the dialogue with the State party after an interval of more than 17 years. The Committee welcomes the State party's decision to send a strong delegation from its capital, composed of representatives of different Government authorities, for the examination of the second periodic report, and the readiness expressed by the delegation to continue the dialogue with the Committee after the examination of the report. The Committee is also pleased to note that the delegation of the State party recognized the importance of the Committee's task and intimated that the Committee can expect more prompt reporting in the future. The Committee

regrets, however, the considerable delay in submission of the report, which was due in 1987. It regrets the lack of information on the human rights situation in fact, as well as the absence of facts and data as to implementation. As a result, a number of credible and substantiated allegations of violations of Covenant provisions which have been brought to the attention of the Committee could not be addressed effectively, and the Committee found it difficult to determine whether individuals in the State party's territory and subject to its jurisdiction fully and effectively enjoy their fundamental rights under the Covenant.

### B. Positive aspects

(3) The Committee appreciates the efforts undertaken by the State party to translate and make available texts of domestic legislation relevant to the examination of the second periodic report, which greatly facilitated the Committee's work.

(4) The Committee welcomes the reduction of the number of criminal offences carrying the death penalty from 33 to 5, as well as the readiness, mentioned in the report and confirmed by the delegation, further to review the issue of capital punishment with a view to its abolition.

(5) The Committee appreciates that the delegation acknowledged the need to improve the condition of human rights in several areas covered by the Covenant, notably the situation of women in the DPRK; in that context, the Committee welcomes the ratification by the State party, in February 2001, of the Convention on the Elimination of All Forms of Discrimination against Women.

(6) The Committee welcomes as a positive sign that exchange visits between families from the State party and the Republic of Korea, however limited, have taken place on three occasions since the Pyongyang Declaration of 15 June 2000.

(7) The Committee also appreciates the discontinuation of administrative internment in the State party.

### C. Subjects of concern and recommendations

(8) The Committee remains concerned about constitutional and legislative provisions that seriously endanger the impartiality and independence of the judiciary, notably that the Central Court is accountable to the Supreme People's Assembly under article 162 of the Constitution. Furthermore, article 154 of the Constitution limits the tenure of judges to five years and article 129 of the Criminal Code subjects judges to criminal liability for handing down "unjust judgements". Given the roles assigned to the judiciary under articles 2 and 14, paragraph 1, of the Covenant, these legal provisions have an adverse impact on the protection of human rights guaranteed under the Covenant, and endanger the independence of the judiciary as required by article 14 (1) of the Covenant.

The State party should take appropriate measures to ensure and protect the independence and impartiality of the judiciary at all levels.

(9) The Committee has noted uncertainty about the status of the Covenant in the State party's internal legal framework. It notes that pursuant to article 17 of the Treaty Law of December 1998, the Covenant has the same status as domestic law. However, doubts remain as to whether the Covenant would have primacy over domestic law if the latter is in conflict with Covenant provisions.

The State party is requested to provide information, in its next periodic report to the Committee, about the situation prevailing in the event of a conflict between the Covenant and domestic law, including the Constitution. The Committee wishes to receive from the State party more precise information about the number of cases in which the Covenant was in fact invoked before the domestic courts, and with what result.

(10) The Committee is concerned that, in addition to judicial protection, there is no independent national institution for the promotion and protection of human rights. It considers that article 69 of the Constitution and the Law on Complaint and Petition granting every citizen the right to submit complaints about the encroachment of his or her rights is no substitute for such an independent monitoring body.

The State party should consider the establishment of a national human rights institution (article 2 of the Covenant).

(11) The Committee is further concerned about the limited number of human rights organizations in the DPRK, and the limited access to the State party's territory that is accorded to human rights organizations, as reflected in the small number of international human rights non-governmental organizations that have been granted permission to visit the DPRK over the last decade.

The State party should grant access to its territory to international human rights organizations and other international bodies on a regular basis at their request and ensure accessibility to indispensable information about the promotion and protection of human rights.

(12) Given the State party's obligation, under article 6 of the Covenant, to protect the life of its citizens and to take measures to reduce infant mortality and increase life expectancy, the Committee remains seriously concerned about the lack of measures taken by the State party to deal with the food and nutrition situation in the DPRK and the lack of measures taken to address, in cooperation with the international community, the causes and consequences of the drought and other natural disasters which seriously affected the country's population in the 1990s.

The Committee recalls paragraph 5 of its General Comment No. 6 [16] on article 6 of the Covenant, which recommends that States parties "take all possible measures to reduce infant mortality and increase life expectancy, especially in adopting measures to eliminate malnutrition ...." The State party should provide the Committee with supplementary information on this issue.

(13) The Committee takes note of the delegation's information that the death penalty has rarely been imposed and carried out in the last three years. While the Committee appreciates that

the number of offences carrying the death penalty has been reduced to five, it remains seriously concerned by the fact that out of these five offences, as the report states, four are essentially political offences (articles 44, 45, 47 and 52 of the Criminal Code), couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria, and not be confined to "the most serious crimes" only, as required under article 6, paragraph 2, of the Covenant. The Committee is also concerned by acknowledged and reported instances of public executions.

The State party should review and amend the above-mentioned articles of the Criminal Code, to bring them into conformity with the requirements of article 6, paragraph 2, of the Covenant. The State party should refrain from any public executions. It is invited to work towards the declared goal of abolishing capital punishment.

(14) The Committee considers that article 10 of the Criminal Code, under which punishment for an offence not provided for in the Code will be imposed in accordance with those provisions of the Code punishing offences similar in nature and gravity, is incompatible with the concept of "nullum crimen sine lege", enshrined in article 15 of the Covenant.

The State party should repeal article 10 of the Criminal Code.

(15) The Committee is deeply concerned about consistent and substantiated allegations of violations, by law enforcement personnel, of article 7 of the Covenant, to which the delegation has not sufficiently responded. The information given by the delegation about the small number of complaints of ill-treatment in custody or detention (6 complaints between 1998 and 2000) is difficult to accept as a reflection of the actual situation, in the light of the material available to the Committee, which suggests that the number of instances of ill-treatment and torture is significantly higher.

The State party should ensure that all instances of ill-treatment and of torture and other abuses committed by agents of the State are promptly considered and investigated by an independent body. The State party should institute a system of independent oversight of all places of detention and custody with a view to preventing any act of abuse of power by law enforcement personnel.

(16) The Committee takes note of the information provided by the delegation on the conditions of detention in prisons of the Democratic People's Republic of Korea. The Committee nonetheless remains concerned about the many allegations of cruel, inhuman and degrading treatment and conditions and of inadequate medical care in reform institutions, prisons and prison camps, which appear to be in violation of articles 7 and 10 of the Covenant and of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The State party should take steps to improve conditions in the facilities referred to above and all other facilities for detention in the DPRK. It must ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person, as required by article 10 of the Covenant. The State party must ensure that sufficient food and appropriate and timely medical care are available to all detainees.

The Committee strongly recommends that the State party allow for independent internal and international inspection of prisons, reform institutions, and other places of detention or imprisonment.

(17) Notwithstanding the explanations given by the delegation, the Committee continues to harbour serious doubts about the compatibility of the provisions of Chapter Two of the Labour Law of the DPRK, especially articles 14 and 18 thereof, with the prohibition of forced labour in article 8, paragraph 3 (a), of the Covenant.

The State party should amend the above-mentioned provisions of the Labour Law so as to avoid any potential conflict with the provisions of article 8 of the Covenant.

(18) While noting the delegation's explanations about the nature and purpose of pre-trial detention and preliminary investigations tending to prolong the duration of pre-trial detention (see paragraph 65 of the report), the Committee remains concerned about the compatibility of the State party's pre-trial detention practices and preliminary investigation procedures, with article 9 of the Covenant. The duration of detention before a person is brought before a judge is manifestly incompatible with article 9, paragraph 3, of the Covenant.

The State party's next report should contain statistics on the number of persons held in pre-trial detention and on the duration of and reasons for such detention. The State party must ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge. The State party must ensure that all of its practices are consistent with the provisions of article 9 of the Covenant and that detainees have access to counsel and are permitted to contact their families from the moment of apprehension.

(19) The Committee has noted the State party's justification of the "traveller's certificate" which citizens of the DPRK are required to obtain for travel within the DPRK, but considers that such restrictions on domestic travel raise serious questions about their compatibility with article 12, paragraph 1, of the Covenant.

The State party should consider the elimination of the requirement of traveller's certificates.

(20) In the Committee's opinion, the requirement, under the Immigration Law of the DPRK, of administrative permission to travel abroad, and the requirement, for foreigners in the DPRK, to obtain exit visas to leave the country, are incompatible with the provisions of article 12, paragraph 2, of the Covenant.

The State party should eliminate the requirement of administrative permission and exit visa as a general rule and require them only in individual cases that can be justified in the light of the Covenant.

(21) While noting that the expulsion of aliens is exercised "with great prudence" (paragraph 82 of the report), the Committee regrets that there is no law, or formal procedure, governing the expulsion of aliens from the territory of the DPRK.

Before expelling an alien, the State party should provide him or her with sufficient safeguards and an effective remedy, in conformity with article 13 of the Covenant. The State party is urged to consider the adoption of legislation governing the expulsion of aliens, which should be consistent with the principle of non-refoulement.

(22) The Committee notes with regret that the delegation was unable to provide up-to-date information about religious freedoms in the DPRK. As only 40,000 citizens of the DPRK (i.e., less than 0.2 per cent of the population), grouped into four religious communities, are said to be "believers", and in the light of information available to the Committee that religious practice is repressed or strongly discouraged in the DPRK, the Committee is seriously concerned that the State party's practice in this respect does not meet the requirements of article 18 of the Covenant.

The State party is requested to provide the Committee with up-to-date information about the number of DPRK citizens belonging to religious communities and the number of places of worship, as well as the practical measures taken by the authorities to guarantee the freedom of exercise of religious practice by the communities mentioned in paragraph 112 of the report.

(23) The Committee is concerned that various provisions of the Press Law, and their frequent invocation, are difficult to reconcile with the provisions of article 19 of the Covenant. The Committee is concerned that the notion of "threat to the State security" may be used in such ways as to restrict freedom of expression. Also, the Committee is concerned that the permanent presence, in the DPRK, of foreign media representatives is confined to journalists from three countries, and foreign newspapers and publications are not readily available to the public at large. Moreover, DPRK journalists may not travel abroad freely.

The State party should specify the reasons that have led to the prohibition of certain publications, and should refrain from measures that restrict the availability of foreign newspapers to the public. The State party is requested to relax restrictions on the travel abroad by DPRK journalists, and to avoid any use of the notion of "threat to the State security" that would repress freedom of expression contrary to article 19.

(24) The Committee has noted the delegation's statement that freedom of assembly is fully respected in the Democratic People's Republic of Korea. The Committee remains concerned, however, about restrictions on public meetings and demonstrations, including possible abuse of the requirements of the laws governing assembly.

The Committee requests the State party to provide additional information on the conditions for public assemblies and, in particular, to indicate whether and under what conditions the holding of a public assembly can be prevented, and whether such a measure can be appealed.

(25) The provisions of article 25 include the right of every citizen of a State party to have the right and the opportunity, without the restrictions mentioned in article 2 and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives (art. 25 (a)), and to vote or be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free

expression of the wish of the electors. The Committee has taken note of the delegation's explanation that, as there has been no popular manifestation of any desire to create new political parties, no regulation or legislation governing the creation and registration of political parties is currently envisaged. The Committee considers that this situation runs counter to the provisions of article 25 of the Covenant, as it may adversely affect the rights of citizens to participate in the conduct of public affairs through freely chosen representatives, as required by article 25.

The State party should refer to the Committee's General Comment 25[57] on article 25 as guidance in respect of the above issues, with a view to ensuring full compliance with the provisions of article 25.

(26) While noting the delegation's statement that trafficking of women does not exist in the DPRK, the Committee remains seriously concerned by the number of substantiated allegations about trafficking of women, in violation of article 8 of the Covenant, brought to its attention by non-governmental and other sources, including the report of the Special Rapporteur on Violence against Women of the Commission on Human Rights.

The State party should investigate the above allegations further, in a spirit of cooperation, and report its findings to the Committee.

(27) The Committee notes with concern the low level of representation of women in more senior levels of the public sector, as well as the absence of any precise data on the representation of women in other sectors of the economy, including their level of responsibility.

The State party is requested to take measures to implement articles 3 and 26 of the Covenant by improving women's participation in the public sector workforce, especially in senior positions, and to provide the Committee with statistical data on the status of women, in particular as to the level of their responsibility and remuneration in the major economic sectors.

(28) The State party should ensure that its second periodic report, and the present concluding observations, are disseminated widely.

(29) The State party should indicate within one year, in accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the measures it has taken or envisages to give effect to the Committee's recommendations contained in paragraphs 15, 22, 23, 24 and 26 of the present concluding observations.

(30) The Committee requests that the information relating to its other recommendations and to the Covenant as a whole should be included in the third periodic report of the Democratic People's Republic of Korea, to be submitted by 1 January 2004.

# CHAPTER V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

87. Individuals who claim that any of their rights under the International Covenant on Civil and Political Rights have been violated by a State party, and who have exhausted all available domestic remedies, may submit written communications to the Human Rights Committee for consideration under the Optional Protocol. No communication can be considered unless it concerns a State party to the Covenant that has recognized the competence of the Committee by becoming a party to the Optional Protocol. Of the 148 States that have ratified, acceded or succeeded to the Covenant, 98 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, sect. B). Moreover, under article 12, paragraph 2 of the Optional Protocol the Committee is still considering communications from two States parties (Jamaica and Trinidad and Tobago) that have denounced the Optional Protocol, such communications having been registered before denunciation took effect.

88. Consideration of communications under the Optional Protocol is confidential and takes place in closed meetings (article 5, paragraph 3, of the Optional Protocol). Under rule 96 of the rules of procedure, all working documents issued for the Committee are confidential unless the Committee decides otherwise. However, the author of a communication and the State party concerned may make public any submissions or information bearing on the proceedings, unless the Committee has requested the parties to respect confidentiality. The Committee's final decisions (Views, decisions declaring a communication inadmissible, decisions to discontinue a communication) are made public; the names of the authors are disclosed unless the Committee decides otherwise.

## A. Progress of work

89. The Committee started its work under the Optional Protocol at its second session, in 1977. Since then, 1,004 communications concerning 69 States parties have been registered for consideration by the Committee, including 68 placed before it during the period covered by the present report (31 July 2000-27 July 2001).

90. The status of the 1,004 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by Views under article 5, paragraph 4, of the Optional Protocol: 368, including 282 in which violations of the Covenant were found;

(b) Declared inadmissible: 300;

(c) Discontinued or withdrawn: 142;

(d) Not yet concluded: 194.

91. In addition, the secretariat of the Committee receives large numbers of communications in respect of which the authors are advised that further information would be needed before their

communications could be registered for consideration by the Committee. The authors of a considerable number of other communications have been informed that their cases will not be submitted to the Committee, for example because they fall clearly outside the scope of the Covenant. Other cases, not yet registered, are mentioned in section B below, together with the Committee's comments on this situation.

92. During the seventieth to seventy-second sessions, the Committee concluded consideration of 22 cases by adopting Views thereon. These are cases Nos. 547/1993 (Mahuika v. New Zealand), 630/1995 (Mazou v. Cameroon), 675/1995 (Toala v. New Zealand), 687/1996 (Rojas García v. Colombia), 727/1996 (Paraga v. Croatia), 736/1997 (Ross v. Canada), 790/1997, (Cheban v. Russia), 806/1998 (Thompson v. St. Vincent and the Grenadines), 818/1998 (Sextus v. Trinidad and Tobago), 819/1998, (Kavanagh v. Ireland), 821/1998 (Chongwe v. Zambia), 833/1998 (Karker v. France), 839/1998 (Mansaraj et al. v. Sierra Leone), 840/1998 (Gborie et al. v. Sierra Leone), 841/1998 (Sesay et al. v. Sierra Leone), 846/1999 Jansen-Gielen v. the Netherlands, 855/1999 (Schmitz-de-Jong v. the Netherlands), 857/1999 (Blazek et al. v. the Czech Republic), 858/1999 (Buckle v. New Zealand) 869/1999 (Piandiong et al. v. the Philippines), 884/1999 (Ignatane v. Latvia) and 930/2000 (Winata v. Australia). The text of these decisions is reproduced in annex X.

93. The Committee also concluded consideration of 17 cases by declaring them inadmissible. These are cases Nos. 762/1997 (Jensen v. Australia), 787/1997 (Gobin v. Mauritius), 791/1998 (Singh v. New Zealand), 808/1998 (Rogl v. Germany), 822/1998 (Vakoume v. France), 831/1998 (Meiers v. France), 832/1998 (Walravens v. Australia), 834/1998 (Kehler v. Germany), 866/1999 (Torregrosa Lafuente et al. v. Spain), 905/2000 (Asensio López v. Spain), 935/2000 (Mahmoud v. Slovakia), 947/2000 (Hart v. Australia), 948/2000 (Devgan v. Canada), 949/2000 (Keshavjee v. Canada), 952/2000 (Parun and Bulmer v. New Zealand), 963/2001 (Uebergang v. Australia) and 991/2001 (Neremberg v. Germany). The text of these decisions is reproduced in annex XI.

94. Under the Committee's rules of procedure, the Committee will as a rule decide on the admissibility and merits of a communication together in order to expedite its work under the Optional Protocol. Only in exceptional circumstances will the Committee request a State party to address admissibility only. A State party which has received a request for information on admissibility and merits may within two months apply for the communication to be rejected as inadmissible. Such a request, however, will not absolve the State party from the requirement to submit information on the merits within the set time limit unless the Committee, its Working Group or its designated Special Rapporteur decides to extend the time for submission of information on the merits until after the Committee has ruled on admissibility. In the period under review, the Committee, acting through its Special Rapporteur on new communications, decided in several cases to deal first with the admissibility of the communication. Communications received before the new rules of procedure came into force will be dealt with under the old rules, according to which admissibility is considered at the first stage,

95. During the period under review, seven communications were declared admissible for examination on the merits. Decisions declaring communications admissible are not normally published by the Committee. Procedural decisions were adopted in a number of pending cases

(under article 4 of the Optional Protocol or under rules 86 and 91 of the Committee's rules of procedure). The Committee requested the secretariat to take action in other pending cases.

96. The Committee decided to close the files of eight cases following withdrawal by the authors and to discontinue the consideration of one communication, No. 637/1995 (Coloma v. Russia), because of having lost contact with the author.

### B. Growth of the Committee's caseload under the Optional Protocol

97. As the Committee has stated in previous reports, the increasing number of States parties to the Optional Protocol and better public awareness of the procedure have led to an increase in the number of communications submitted to the Committee. The table below sets out the pattern of the Committee's work on communications over the last five calendar years to 31 December 2000.

Communications dealt with, 1996-2000

| Year | New cases registered | Cases concluded[a] | Pending cases at 31 December ((5) + (6)) | Admissible cases | Pre-admissible cases |
|---|---|---|---|---|---|
| 2000 | 58 | 43 | 182 | 27 | 155 |
| 1999 | 59 | 55 | 167 | 36 | 131 |
| 1998 | 53 | 51 | 163 | 42 | 121 |
| 1997 | 60 | 56 | 157 | 44 | 113 |
| 1996 | 56 | 35 | 153 | 42 | 111 |

[a] Either by the adoption of Views, inadmissibility decisions or a decision to discontinue.

98. In its 2000 annual report, the Committee welcomed the initiative taken by the Office of the High Commissioner for Human Rights, in the context of the Annual Appeal, to request donations for the improvement of the servicing of the treaty bodies and aimed, inter alia, at eliminating the backlog in the processing of communications under the Optional Protocol (see A/55/40 chapter I, paragraph 21, and annex XII). The establishment of the petitions team in December 2000 was an important step towards improving the situation. However, the growing number of pending cases is a matter of permanent concern. The Committee also remains concerned at the large number of cases not yet registered.

### C. Approaches to considering communications under the Optional Protocol

#### 1. Special Rapporteur on new communications

99. At its thirty-fifth session, in March 1989, the Committee decided to designate a special rapporteur to process new communications as they were received, i.e. between sessions of the Committee. At the Committee's sixty-fifth session, in March 1999, Mr. Kretzmer was designated Special Rapporteur. He exercised his mandate until the Committee's seventy-first session, in March 2001, when Mr. Scheinin was designated as the new Special Rapporteur. In the period covered by the present report, the Special Rapporteurs

transmitted 60 new communications to the States parties concerned under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the questions of admissibility and merits. In seven cases, the Special Rapporteur issued requests for interim measures of protection pursuant to rule 86 of the Committee's rules of procedure. The competence of the Special Rapporteur to issue, and if necessary to withdraw, requests for interim measures under rule 86 of the rules of procedure is described in the 1997 annual report (A/52/40, vol. I, para. 467).

### 2. Competence of the Working Group on Communications

100. As its thirty-sixth session in July 1989, the Committee decided to authorize the Working Group on Communications to adopt decisions declaring communications admissible when all five members so agreed. Failing such agreement, the Working Group would refer the matter to the Committee. It could also do so whenever it believed that the Committee itself should decide the question of admissibility. While the Working Group could not adopt decisions declaring communications inadmissible, it might make recommendations in that respect to the Committee. Pursuant to those rules, the Working Group on Communications, meeting prior to the seventieth, seventy-first and seventy-second sessions of the Committee, declared five communications admissible.

101. At its fifty-fifth session, in October 1995, the Committee decided that each communication would be entrusted to a member of the Committee who would act as rapporteur for it in the Working Group and in the plenary Committee. The role of the rapporteur is described in the 1997 report (A/52/40, para. 469).

## D. Individual opinions

102. In its work under the Optional Protocol, the Committee strives to arrive at its decisions by consensus. However, pursuant to rule 98 (formerly rule 94, paragraph 4) of the Committee's rules of procedure, members can add their individual concurring or dissenting opinions to the Committee's Views. Under this rule, members can also append their individual opinions to the Committee's decisions declaring communications admissible or inadmissible (formerly rule 92, paragraph 3).

103. During the period under review, individual opinions were appended to the Committee's Views in 11 cases: Nos. 547/1993 (Mahuika v. New Zealand), 675/1995 (Toala v. New Zealand), 687/1996 (Rojas García v. Colombia), 736/1997 (Ross v. Canada), 806/1998 (Thompson v. St. Vincent and the Grenadines), 818/1998 (Sextus v. Trinidad and Tobago), 819/1998 (Kavanagh v. Ireland), 846/1999 (Jansen-Gielen v. the Netherlands), 857/1999 (Blazek et al. v. the Czech Republic), 869/1999 (Piandiong et al. v. the Philippines), and 930/2000 (Winata v. Australia). Individual opinions were also appended to the Committee's decisions declaring three communications inadmissible: 787/1997 (Gobin v. Mauritius), 832/1998 (Walravens v. Australia), 866/1999 (Torregrosa Lafuente et al. v. Spain). An individual opinion was appended with respect to a decision to declare admissible one communication.

### E. Review of decisions declaring communications admissible

104. Pursuant to rule 93, paragraph 4, of the rules of procedure, in the course of examining the merits of the case, the Committee may review a decision declaring a communication or part of the communication admissible and declare it inadmissible. It did so in case No. 675/1995 (Toala v. New Zealand) where it declared part of the author's claims inadmissible after the State party had shown that there were available and effective domestic remedies that the author had failed to exhaust.

105. Similarly, in case No. 727/1996 (Paraga v. Croatia) the Committee had the opportunity to review its decision to declare part of the communication admissible. It observed:

> "The Committee notes the State party's contention that these proceedings were terminated on 17 June 1998, and its contention that the author can now file a claim for compensation in the domestic courts. Given this new information provided since the decision on admissibility, the Committee reviews its previous decision on admissibility, in accordance with rule 93, paragraph 4 of its rules of procedure, and declares that the claims relating to an alleged violation of article 9, paragraph 5, is inadmissible because of the authors' failure to exhaust domestic remedies in this respect under article 5, paragraph 2 (b) of the Optional Protocol. The author should avail himself of domestic remedies in this regard." (annex X, sect. E, para. 9.4).

106. The Committee also reviewed the admissibility of an aspect of communication No. 675/1995 (Toala et al. v. New Zealand) and declared it inadmissible for non-exhaustion of domestic remedies (annex X, sect. C, para. 10).

### F. Issues considered by the Committee

107. A review of the Committee's work under the Optional Protocol from its second session, in 1977, to its sixty-ninth session, in 2000, can be found in the Committee's annual reports for 1984 to 2000, which, inter alia, contain summaries of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the Views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol are reproduced in annexes to the Committee's annual reports to the General Assembly.

108. Two volumes containing selected decisions of the Human Rights Committee under the Optional Protocol, from the second to the sixteenth sessions (1977-1982) and from the seventeenth to the thirty-second sessions (1982-1988), have been published (CCPR/C/OP/1 and 2). The publication of volume 3 of the selected decisions, covering the period from the thirty-third to the thirty-ninth sessions, is still at the stage, reported last year, of being "expected shortly". As domestic courts increasingly apply the standards contained in the International Covenant on Civil and Political Rights, it is imperative that the Committee's decisions are available on a worldwide basis.

109. The following summary reflects further developments concerning issues considered during the period covered by the present report.

## 1. Procedural issues

### (a) Reservations and Interpretative Declarations to the Optional Protocol

110. In case No. 727/1996 (Paraga v. Croatia), the Committee had to declare part of the communication inadmissible in the light of a declaration made by the State party upon accession to the Optional Protocol. It observed:

> "The Committee considered that it was precluded *ratione temporis*, in the light of the declaration made by the State party upon accession to the Optional Protocol, from considering the remainder of the communication insofar as it related to events which occurred before 12 January 1996, since the continuing effects claimed by Mr. Paraga did not appear to constitute in themselves a violation of the Covenant, nor could they be interpreted as an affirmation, by act or clear implication, of the alleged previous violations of the State party" (annex X, sect. E, para. 5.4).

### (b) Inadmissibility *ratione temporis* (Optional Protocol, article 1)

111. Under article 1 of the Optional Protocol, the Committee may only receive communications concerning alleged violations of the Covenant which occurred after the entry into force of the Covenant and the Optional Protocol for the State party concerned, unless continuing effects exist which in themselves constitute a violation of a Covenant right. In one communication No. 675/1995 (Toala v. New Zealand), the Committee decided to address the issue of continuing effects when examining the merits of the case. In declaring the communication admissible it noted that:

> "The authors claimed that they were, pursuant to the Lesa ruling, New Zealand citizens and, consequently, had the right to freely enter and reside in New Zealand territory, despite the 1982 Act which stripped them of their New Zealand citizenship. The legislation in question was enacted in 1982 after New Zealand had ratified the International Covenant on Civil and Political Rights, but before it ratified the Optional Protocol in 1989. The Committee considered, however, that the legislation in question may have continuing effects which in themselves could constitute a violation under article 12, paragraph 4, of the Covenant. The issue of whether these continuing effects were in violation of the Covenant was one which should be examined on the merits. The Committee considered therefore that it was not precluded *ratione temporis* from declaring the communication admissible" (annex X, sect. C, para. 6.3).

### (c) Claims not substantiated (Optional Protocol, article 2)

112. Article 2 of the Optional Protocol provides that individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

113. Although an author does not need to prove the alleged violation at the admissibility stage, he or she must submit sufficient materials substantiating his/her allegation for purposes of admissibility. A "claim" is, therefore, not just an allegation, but an allegation supported by a

certain amount of substantiating materials. In cases where the Committee finds that the author has failed to substantiate a claim for purposes of admissibility, the Committee has held the communication inadmissible, in accordance with rule 90 (b) of its rules of procedure.

114. Claims have been declared inadmissible for lack of substantiation in cases Nos. 547/1993 (Mahuika et al. v. New Zealand), 736/1997 (Ross v. Canada), 762/1997 (Jensen v. Australia), 791/1997 (Singh v. New Zealand), 806/1998 (Thompson v. St. Vincent and the Grenadines), 808/1998 (Rogl v. Germany), 821/1998 (Chongwe v. Zambia), 834/1998 (Kehler v. Germany), 935/2000 (Mahmoud v. the Slovak Republic), 947/2000 (Hart v. Australia), 949/2000 (Keshavjee v. Canada) and 952/2000 (Parun v. New Zealand).

**(d) Claims not compatible with the provisions of the Covenant (Optional Protocol, article 3)**

115. Communications must raise an issue concerning the application of the Covenant. Despite previous attempts to explain that the Committee cannot function under the Optional Protocol as an appellate body where the issue is one of domestic law, some communications continue to be based on such a misapprehension; such cases, as well as those where the facts presented do not raise issues under the articles of the Covenant invoked by the author, are declared inadmissible under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant. In case No. 791/1997 (Singh v. New Zealand) part of the author's claims were declared inadmissible on this ground.

116. Claims based on alleged rights that are not protected in the Covenant are declared inadmissible *ratione materiae*. While the Committee would welcome a decision by a State party to provide legal aid to submit communications under the Optional Protocol, it observes that there is no requirement in the Covenant to provide such legal aid. Thus, in declaring part of communication No. 675/1995 (Toala v. New Zealand) inadmissible, the Committee observed:

> "With regard to the allegation that the authors' right under article 14, paragraph 3, had been violated since New Zealand did not make legal aid available in order to submit a communication to the Human Rights Committee, the Committee noted that article 14 refers to domestic procedures only and there is no separate provision in the Covenant or the Optional Protocol dealing with the obligation to provide legal aid to complainants under the Optional Protocol. In the instant case, the Committee considered that the authors had no claim under article 3 of the Optional Protocol, and accordingly this part of the communication was inadmissible" (annex X, sect. C, para. 6.8).

117. In case No. 963/2001 (Uebergang v. Australia) the Committee examined the scope of article 14, paragraph 6, and found that the facts of the case were not covered by this provision. It observed:

> "the author's conviction by the District Court on 11 September 1997 was overturned by the Court of Appeal on 27 February 1998. The Committee is, therefore, of the view that

the author's conviction was not a final decision within the meaning of article 14, paragraph 6, and that article 14, paragraph 6, does not apply to the facts of the instant case. This part of the communication is therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol" (annex XI, sect. P, para. 4.3).

**(e) The requirement of exhaustion of domestic remedies (Optional Protocol, article 5, paragraph 2 (b))**

118. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, the Committee has already established that the rule of exhaustion applies only to the extent that those remedies are effective and available. The State party is required to give "details of the remedies which it submitted had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (case No. 4/1977, Torres Ramírez v. Uruguay). The rule also provides that the Committee is not precluded from examining a communication if it is established that application of the remedies in question is unreasonably prolonged. Further a State party may waive before the Committee the requirements of exhaustion of domestic remedies.

119. In the period covered by the present report, certain claims were declared inadmissible for failure to pursue available and effective remedies. See cases: 675/1995 (Toala v. New Zealand), 727/1996 (Paraga v. Croatia), 736/1997 (Ross v. Canada), 791/1997 (Singh v. New Zealand), 808/1998 (Rogl v. Germany), 822/1998 (Vakoumé et al. v. France), 833/1998 (Karker v. France), 935/2000 (Mahmoud v. Slovak Republic), 952/2000 (Parun and Bulmer v. New Zealand) and 991/2001 (Neremberg et al. v. Germany).

**(f) Inadmissibility because of submission to another procedure of international investigation or settlement**

120. Pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee shall ascertain that the same matter is not being examined under another procedure of international investigation or settlement. Upon becoming parties to the Optional Protocol some States have made a reservation to preclude the Committee's competence if the same matter has already been examined elsewhere. During the period under review, the Committee has addressed this issue in two cases.

121. In case No. 808/1998 (Rogl v. Germany) the Committee observed:

"Concerning the author's allegations of violations of his own rights under articles 14, 17 and 23, the Committee notes that the European Commission of Human Rights has rejected, on 20 May 1996, the author's application concerning the same facts and issues as are before the Committee. The Committee also recalls that the State party, when acceding to the Optional Protocol, made a reservation with respect to article 5, paragraph 2 (a), of the Optional Protocol to the effect that the Committee shall not have

competence to consider communications which have already been considered under another procedure of international investigation or settlement" (annex XI, sect. D, para. 9.2).

"The Committee notes that the European Commission carried out a complete examination of the facts and issues arising in the case. The Commission, having considered the entire circumstances of the case thoroughly and comprehensively, ultimately found that the interference with the author's right to family life was justified and consequently declared his claim inadmissible as manifestly ill-founded. In terms of the claims of unfairness of the proceedings, the Commission found that, with the exception of an alleged violation through the failure of the Bavarian Administrative Court of Appeal to pronounce its decision publicly, there was no reason to conclude that the proceedings were unfair when viewed as a whole" (annex XI, sect. D, para. 9.3).

"In terms of the author's argument that the provisions of the European Convention are different from the provisions of the Covenant now invoked, the mere fact that the wording of the provisions vary is not enough, of itself, to conclude that an issue now raised under a Covenant right has not been 'considered' by the European Commission. A material difference in the applicable provisions in the instant case must be demonstrated. In this case, the provisions of articles 6, 8 and 14 of the European Convention, as interpreted by the European Commission, are sufficiently proximate to the provisions of articles 14 and 17 of the Covenant now invoked that the relevant issues arising can be said to have been 'considered'. That conclusion is not altered by the additional pleading before the Committee of article 23 of the Covenant, as any issues arising under that article have in their substance been addressed in the foregoing consideration by the European Commission" (annex XI, sect. D, para. 9.4).

122. The Committee also declared communication No. 991/2001 (Neremberg et al. v. Germany) inadmissible partly on this ground (annex XI, sect. Q, paras. 4.2 and 5).

123. In case No. 834/1998 (Kehler v. Germany) the Committee noted the State party's contention that paragraph (a) of the reservation entered upon its accession to the Optional Protocol excluded the Committee's competence to examine the author's claim because the same matter had already been considered under another procedure of international investigation or settlement. The Committee also noted that the State party had informed the Committee that the European Commission of Human Rights declared the author's complaint inadmissible on 3 October 1997, finding that the application did not disclose any appearance of a violation of the rights and freedoms set out in the European Convention or its Protocols. However, the Committee concluded: "In view of the author's failure to supply his application to the Commission, the absence of any recitation of facts or reasoning in the Commission's decision, and the broader provisions of the Covenant which touch upon present issues, the Committee possesses insufficient information to determine the applicability of the State party's reservation to the present communication" (annex XI, sect. H, para. 6.2).

**(g) Abuse of the right of submission**

124. Article 3 of the Optional Protocol provides that a communication may be declared inadmissible on grounds of abuse. Hitherto the Committee has not determined in a general comment or in its jurisprudence what exactly would constitute an abuse of the right of submission. This jurisprudence remains to be developed. In case No. 787/1997 (Gobin v. Mauritius), a majority of the members thought that the delay in submitting that communication constituted abuse. The Committee observed:

> "The State party claims that because of the delay in submission of the communication the Committee should consider it as inadmissible as an abuse of the right of submission under article 3 of the Optional Protocol. The Committee notes that there are no fixed time limits for submission of communications under the Optional Protocol and that mere delay in submission does not of itself involve abuse of the rights of communication. However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay. In the present case, the alleged violation took place at periodic elections held five years before the communication was submitted on behalf of the alleged victim to the Committee with no convincing explanation in justification of this delay. In the absence of such explanation the Committee is of the opinion that submitting the communication after such a time lapse should be regarded as an abuse of the right of submission, which renders the communication inadmissible under article 3 of the Optional Protocol" (annex XI, sect. B, para. 6.3).

125. Six members of the Committee signed two separate dissenting opinions expressing the view that since the Optional Protocol had not established time limits for submission, and the State party had not sufficiently argued the consequences of the abuse, the communication should not have been declared inadmissible.

**(h) Burden of proof**

126. Under the Optional Protocol, the Committee bases its Views on all written information made available by the parties. This implies that if a State party does not provide an answer to an author's allegations, the Committee will give due weight to an author's uncontested allegations as long as they are substantiated. In the period under review, the Committee made such "default" findings in respect of communications Nos. 821/1998 (Chongwe v. Zambia) (annex X, sect. K, para. 4.1), 839/1998, 840/1998, 841/1998 (Mansaraj et al. v. Sierra Leone) (annex X, sect. M, paras. 4 and 5.4) and 857/1999 (Blazek et al. v. the Czech Republic) (annex X, sect. P, paras. 5.3 and 5.5).

**(i) Interim measures under rule 86**

127. Under rule 86 of the Committee's rules of procedure, the Committee may, after receipt of a communication and before adopting its Views, request a State party to take interim measures in order to avoid irreparable damage to the victim of the alleged violations. The Committee continues to apply this rule on suitable occasions, mostly in cases submitted by or on behalf of persons who have been sentenced to death and are awaiting execution and who claim that they were denied a fair trial. In view of the urgency of the communications, the Committee has

requested the States parties concerned not to carry out the death sentences while the cases are under consideration. Rule 86 has also been applied in other circumstances, for instance in cases of imminent deportation or extradition which may involve or expose the author to a real risk of violation of rights protected by the Covenant. For the Committee's reasoning on whether or not to issue a request under rule 86, see the Committee's Views in communication No. 558/1993 (Canepa v. Canada) (A/52/40, vol. II, annex VI, sect. K).

**(j) Breach of Optional Protocol obligations**

128. When States parties have disregarded the Committee's decisions under rule 86, the Committee has found that the State party has violated its obligations under the Optional Protocol. In case No. 869/1999, Piandiong et al. v. the Philippines, the complainants had been sentenced to death and claimed violations of articles 6 and 14 of the Covenant. Despite the Committee's request under rule 86 of its rules of procedure not to execute the complainants while their case was under consideration, they were executed on 8 July 1999 (see A/54/40, para. 420 (b)). At its seventieth session, while examining the merits of the communication, the Committee expressed its great concern over the State party's attitude:

> "By adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and art. 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (arts. 5.1 and 5.4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views" (annex X, sect. R, para. 5.1).
>
> "Quite apart, then, from any violation of the Covenant charged to a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In respect of the present communication, the authors allege that the alleged victims were denied rights under articles 6 and 14 of the Covenant. Having been notified of the communication, the State party breaches its obligations under the Protocol, if it proceeds to execute the alleged victims before the Committee concludes its consideration and examination, and the formulation and communication of its Views. It is particularly inexcusable for the State to do so after the Committee has acted under its rule 86 to request that the State party refrain from doing so" (annex X, sect. R, para. 5.2).
>
> "The Committee also expresses great concern about the State party's explanation for its action. The Committee cannot accept the State party's argument that it was inappropriate for counsel to submit a communication to the Human Rights Committee after they had applied for Presidential clemency and this application had been rejected. There is nothing in the Optional Protocol that restricts the right of an alleged victim of a violation

of his or her rights under the Covenant from submitting a communication after a request for clemency or pardon has been rejected, and the State party may not unilaterally impose such a condition that limits both the competence of the Committee and the right of alleged victims to submit communications. Furthermore, the State party has not shown that by acceding to the Committee's request for interim measures the course of justice would have been obstructed" (annex X, sect. R, para. 5.3).

"Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from the country, undermines the protection of Covenant rights through the Optional Protocol" (annex X, sect. R, para. 5.4).

129. In cases Nos. 839-841/1998 (Mansaraj et al. v. Sierra Leone), submitted to the Committee on 12 and 13 October 1998, the Special Rapporteur issued, on 13 and 14 October 1998, decisions under rule 86, requesting the State party to refrain from executing the authors. On 19 October 1998, however, 12 of the 18 authors were executed by firing squad. In its Views, finding a violation of articles 6 and 14 of the Covenant, the Committee also held that the State party had breached its obligations under the Optional Protocol in the same terms as formulated in the Piandiong Views (annex X, sect. M, paras. 5.1 and 5.3).

130. In case No. 964/2001 (Saidov v. Tajikistan), the Special Rapporteur on new communications issued a rule 86 decision requesting a stay of execution, which was transmitted to the State party on 12 January 2001. The Committee subsequently learned that Mr. Saidov was executed on 4 April 2001. By letter of 19 June 2001 addressed to the Permanent Representative of Tajikistan to the United Nations in New York, the Committee Chairperson deplored the execution. During the Committee's seventy-second session the matter was discussed and a note verbale was sent to the State party requesting the following information:

(a) What steps were taken to give effect to the Committee's request under rule 86 to stay the execution;

(b) On what grounds did the State party decide not to stay the execution as requested by the Committee;

(c) What measures are being taken by the State party to guarantee compliance with possible rule 86 requests in the future.

### 2. Substantive issues

#### (a) The right of peoples to self-determination (Covenant, article 1)

131. In case No. 547/1993 (Mahuika et al. v. New Zealand), the Committee, at its fifty-fifth session, had declared the authors' claim under article 1 of the Covenant admissible in conjunction with other claims, noting that only a consideration of the merits of the case would enable the Committee to determine the relevance of article 1 to the authors' claims under article 27 of the Covenant. On the merits, the Committee reiterated its jurisprudence that the

Optional Protocol procedure relates to alleged violations of individual rights, set out in articles 6 to 27 of the Covenant. The Committee noted, however, that the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27. (See also the Committee's Views in case No. 760/1997 (Diergaardt et al. v. Namibia) (A/55/40, vol. II, annex IX, sect. M, para 10.3.)

**(b) The right to life (Covenant, article 6)**

132. Article 6.1 protects every human being's inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of his life.

133. In case No. 806/1998 (Thompson v. St. Vincent and the Grenadines), the complainant had been found guilty of murder and had been given the mandatory death sentence. He claimed that the mandatory nature of the death sentence constituted a violation of article 6.1. The State party had replied that the death sentence was only mandatory for murder, which is the most serious crime under the law, and that this in itself meant that it was a proportionate sentence. The Committee noted:

> "that the mandatory imposition of the death penalty under the laws of the State party is based solely upon the category of crime for which the offender is found guilty, without regard to the defendant's personal circumstances or the circumstances of the particular offence. The death penalty is mandatory in all cases of 'murder' (intentional acts of violence resulting in the death of a person). The Committee considers that such a system of mandatory capital punishment would deprive the author of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case. The existence of a right to seek pardon or commutation, as required by article 6, paragraph 4, of the Covenant, does not secure adequate protection to the right to life, as these discretionary measures by the executive are subject to a wide range of other considerations compared to appropriate judicial review of all aspects of a criminal case. The Committee finds that the carrying out of the death penalty in the author's case would constitute an arbitrary deprivation of his life in violation of article 6, paragraph 1, of the Covenant" (annex X, sect. H, para. 8.2).

134. Five members of the Committee appended a dissenting opinion to the Committee's conclusion, arguing that the mere fact that the death penalty was mandatory in the author's case did not entail a violation of the Covenant.

135. In case No. 821/1998 (Chongwe v. Zambia), the complainant, a Zambian lawyer and opposition leader, had been shot and wounded by the police in August 1997, during a political rally. The State party had not replied to his allegations raised before the Committee. The Committee observed:

> "that article 6, paragraph 1, entails an obligation of a State party to protect the right to life of all persons within its territory and subject to its jurisdiction. In the present case, the author has claimed, and the State party has failed to contest before the Committee that the State party authorized the use of lethal force without lawful reasons, which could have

led to the killing of the author. In the circumstances, the Committee finds that the State party has not acted in accordance with its obligation to protect the author's right to life under article 6, paragraph 1, of the Covenant" (annex X, sect. K, para. 5.2).

136. In cases Nos. 839/1998, 840/1998 and 841/1998 (Mansaraj et al. v. Sierra Leone), the Committee found that article 6 had been breached because the authors had been executed following a trial where the guarantees of a fair hearing had not been observed (annex X, sect. M, para. 5.6).

**(c) Prohibition of torture and ill-treatment (Covenant, art. 7)**

137. In case No. 762/1997 (Jensen v. Australia), the author claimed a violation of article 7 in connection with his detention. In declaring the case inadmissible, the Committee observed:

"With respect to the author's contention that the authorities have inflicted torture or cruel, inhuman and degrading treatment contrary to article 7 and otherwise ill-treated the author contrary to article 10, paragraph 1, the Committee refers to its jurisprudence that a claim by a prisoner pursuant to these articles must demonstrate an additional exacerbating factor beyond the usual incidents of detention. In the present case, the author has failed to demonstrate, for the purposes of admissibility, that he has been treated in any way which departs from the normal treatment accorded a prisoner" (annex XI, sect. A, para. 6.2).

138. In case No. 806/1998 (Thompson v. Saint Vincent and the Grenadines), the Committee found a violation of article 10.1, but not of article 7, and observed:

"that the author had claimed before the High Court that he was confined in a small cell, that he had been provided only with a blanket and a slop pail, that he slept on the floor, that an electric light was on day and night, and that he was allowed out of the cell into the yard one hour a day. The author has further alleged that he does not get any sunlight, and that he is at present detained in a moist and dark cell. The State party has not contested these claims. The Committee finds that the author's conditions of detention constitute a violation of article 10.1 of the Covenant. Insofar as the author means to claim that the fact that he was taken to the gallows after a warrant for his execution had been issued and that he was removed only 15 minutes before the scheduled execution constituted cruel, inhuman or degrading treatment, the Committee notes that nothing before the Committee indicates that the author was not removed from the gallows immediately after the stay of execution had been granted. The Committee therefore finds that the facts before it do not disclose a violation of article 7 of the Covenant in this respect" (annex X, sect. H, para. 8.4).

**(d) Liberty and security of person (Covenant, article 9)**

139. Article 9, paragraph 1, provides for the right to liberty and security of person. In case No. 821/1998 (Chongwe v. Zambia) the Committee recalled its jurisprudence that article 9 (1) of the Covenant protects the right to security of person also outside the context of a formal deprivation of liberty:

"The interpretation of article 9 does not allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction. In the present case, it appears that persons acting in an official capacity within the Zambian police forces shot at the author, wounded him, and barely missed killing him. The State party has refused to carry out independent investigations, and the investigations initiated by the Zambian police have still not been concluded and made public, more than three years after the incident. No criminal proceedings have been initiated and the author's claim for compensation appears to have been rejected. In the circumstances, the Committee concludes that the author's right to security of person, under article 9, paragraph 1 of the Covenant, has been violated" (annex X, sect. K, para. 5.3).

**(e) Treatment during imprisonment (Covenant, article 10)**

140. Article 10, paragraph 1, prescribes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In case No. 818/1998 (Sextus v. Trinidad and Tobago) the Committee considered:

"that the author's conditions of detention as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7" (annex X, sect. I, para. 7.4).

**(f) Freedom of movement (Covenant, article 12)**

141. Article 12, paragraph 1, protects the right to liberty of movement and freedom to choose a residence; paragraph 3 of article 12 provides that these rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant.

142. In case No. 833/1998 (Karker v. France), the complainant had been ordered expelled from France in October 1993. His expulsion, however, could not be enforced, following which his residence in France was subjected to restrictions of his freedom of movement. The State party argued that the restrictions to which the complainant was subjected were necessary for reasons of national security. In this respect, the State party produced evidence to the domestic courts that Mr. Karker was an active supporter of a movement which advocated violent action. The restrictions of movement on Mr. Karker allowed him to reside in a comparatively wide area. Moreover, the restrictions on Mr. Karker's freedom of movement were examined by the domestic courts which, after reviewing all the evidence, held them to be necessary for reasons of national security. The complainant had only challenged the courts' original decision on this question and chose not to challenge the necessity of subsequent restriction orders before the domestic courts. In these circumstances, the Committee was of the view that the materials before it did not allow it to conclude that the State party had misapplied the restrictions in article 12, paragraph 3.

**(g) Right to enter one's own country (Covenant, article 12 (4))**

143. Article 12, paragraph 4, provides that no one shall be arbitrarily deprived of the right to enter his own country.

144. In case No. 675/1995 (Toala et al. v. New Zealand), the complainants were Western Samoan citizens. In July 1982, the Privy Council's decision in Lesa v. AG of New Zealand had as an effect that they became New Zealand citizens. Following a Protocol to the Treaty of Friendship between New Zealand and Western Samoa, the Government of New Zealand passed the Citizenship (Western Samoa) Act of 1982, which nullified the effect of the "Lesa" decision. Some of the complainants arrived in New Zealand in 1986, others in 1993. Having failed to obtain a permanent residence permit, they were ordered deported in 1992 and 1995. Before the Committee, the complainants claimed that the deportation was in violation of their right to enter their own country, since they had been unlawfully deprived of their New Zealand citizenship. The Committee noted:

> "that in 1982 the authors had no connection with New Zealand by reason of birth, descent from any New Zealander, ties with New Zealand or residence in New Zealand. They were unaware of any claim to New Zealand citizenship at the time of the Lesa decision and had acquired New Zealand citizenship involuntarily. It also appears that, with the exception of Mr. Toala, none of the authors had ever been in New Zealand. All these circumstances make it arguable that New Zealand did not become their 'own country' by virtue of the Lesa decision. But in any event, the Committee does not consider that the removal of their New Zealand citizenship was arbitrary. In addition to the circumstances already mentioned, none of the authors had been in New Zealand between the date of the Lesa decision and the passage of the 1982 Act. They had never applied for a New Zealand passport or claimed to exercise any rights as New Zealand citizens. The Committee is therefore of the view that article 12.4 was not violated in the authors' case" (annex X, sect. C, para. 11.5).

**(h) Expulsion (Covenant, article 13)**

145. Article 13 of the Covenant provides procedural rights in case of expulsion. In case No. 833/1998 (Karker v. France), the Committee examined an allegation of a breach of article 13, but concluded that the facts did not show that the article had been violated:

> "The Committee observes that article 13 of the Covenant provides procedural guarantees in case of expulsion. The Committee notes that Mr. Karker's expulsion was decided by the Minister of the Interior for urgent reasons of public security, and that Mr. Karker was therefore not allowed to submit reasons against his expulsion before the order was issued. He did, however, have the opportunity to have his case reviewed by the Administrative Tribunal and the Council of State, and at both procedures he was represented by counsel. The Committee concludes that the facts before it do not show that article 13 has been violated in the present case" (annex X, sect. L, para. 9.3).

**(i) Guarantees of a fair hearing (Covenant, article 14)**

146. Article 14, paragraph 1, provides for the right to equality before the courts and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. In case 869/1999 (Piandiong et al. v. the Philippines), the Committee recalled its jurisprudence that it is generally for the courts of States parties, and not for the Committee, to evaluate the facts and evidence in a particular case. This rule also applies to questions as to the lawfulness and credibility of an identification. In the instant case the Court of Appeal, in addressing the complainants' argument about the irregularity of the line-up identification, held that the identification of the accused at the trial had been based on in-court identification by the witnesses and that the line-up identification had been irrelevant. In these circumstances, the Committee found that there was no basis for holding that the in-court identification of the accused was incompatible with their rights under article 14 of the Covenant. Three members of the Committee appended a dissenting opinion to this finding.

147. In case No. 846/1999 (Jansen-Gielen v. the Netherlands) the Committee made a finding of a violation of this provision:

> "The author has claimed that the failure of the Central Appeals Tribunal to append the psychological report, submitted by her counsel, to the case file two days before the hearing, constitutes a violation of her right to a fair hearing. The Committee has noted the State party's argument that the Court found that admission of the report two days before the hearing would have unreasonably obstructed the other party in the conduct of the case. However, the Committee notes that the procedural law applicable to the hearing of the case did not provide for a time limit for the submission of documents. Consequently, it was the duty of the Court of Appeal, which was not constrained by any prescribed time limit to ensure that each party could challenge the documentary evidence which the other filed or wished to file and, if need be, to adjourn proceedings. In the absence of the guarantee of equality of arms between the parties in the production of evidence for the purposes of the hearing, the Committee finds a violation of article 14, paragraph 1, of the Covenant" (annex X, sect. N, para. 8.2).

148. An alleged violation of article 14, paragraph 1, was also at issue in case No. 547/1993 (Mahuika et al. v. New Zealand). Through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (see below, para. 166), the complainants' court proceedings concerning their claim to fisheries had been discontinued. In the specific circumstances of the case the Committee found no violation of article 14, paragraph 1, seeing that the discontinuance occurred within the framework of a nationwide settlement of exactly those claims that were pending before the courts. With regard to the claim that the Act prevented the complainants from bringing claims regarding fisheries before the courts, the Committee noted:

> "that article 14.1 encompasses the right to access to court for the determination of rights and obligations in a suit at law. In certain circumstances the failure of a State party to establish a competent court to determine rights and obligations may amount to a violation of article 14.1" (annex X, sect. A, para. 9.11).

149. In the instant case, the Act excluded the courts' jurisdiction to inquire into the validity of claims by Maori in respect to commercial fishing, because the Act was intended to settle these claims. Even before the 1992 Act, these claims were not enforceable through the courts other than in very limited conditions. The Committee considered that whether or not claims in respect of fishery interests could be considered to fall within the definition of a suit at law, the 1992 Act had displaced the determination of Treaty claims in respect of fisheries by its specific provisions. Other aspects of the right to fisheries still gave the right to access to court. The Committee concluded that the facts before it did not disclose a violation of article 14, paragraph 1.

150. In case No. 819/1998 (Kavanagh v. Ireland) the Committee had to decide on the application of article 14, paragraph 1, with respect to the request that hearings be public, and held that there was no violation of this provision. The Committee observed that:

> "The author contends that his right to a public hearing under article 14, paragraph 1, was violated in that he was not heard by the DPP on the decision to convene a Special Criminal Court. The Committee considers that the right to public hearing applies to the trial. It does not apply to pre-trial decisions made by prosecutors and public authorities.
>
> It is not disputed that the author's trial and appeal were openly and publicly conducted. The Committee therefore is of the view that there was no violation of the right to a public hearing" (annex X, sect. J, para. 10.4).

151. Five members of the Committee submitted an individual opinion, expressing the view that there had been a violation of article 14, paragraph 1, of the Covenant.

**(j) Right to appeal (Covenant, article 14, paragraph 5)**

152. Article 14, paragraph 5, of the Covenant provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. In cases Nos. 839/1998, 840/1998 and 841/1998 (Mansaraj et al. v. Sierra Leone) where 12 authors had been executed, the Committee held that article 14, paragraph 5, had been breached:

> "The Committee notes the authors' contention that the State party has breached article 14, paragraph 5, of the Covenant in not providing for a right of appeal from a conviction by a court martial a fortiori in a capital case. The Committee notes that the State party has neither refuted nor confirmed the authors' allegation but observes that 12 of the authors were executed only several days after their conviction. The Committee considers, therefore, that the State party has violated article 14, paragraph 5, of the Covenant, and consequently also article 6, which protects the right to life, with respect to all 18 authors of the communication. The Committee's prior jurisprudence is clear that under article 6, paragraph 2, of the Covenant the death penalty can be imposed inter alia only when all guarantees of a fair trial including the right to appeal have been observed" (annex X, sect. M, para. 5.6).

**(k) Right to family and protection of children (Covenant, articles 17, 23 and 24)**

153. Article 17, paragraph 1, provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. In case No. 858/1999 (Buckle v. New Zealand), the complainant claimed a violation of this right because the courts of New Zealand had deprived her of her guardianship rights over her six children. The Committee noted the information provided by the State party with respect to the extensive procedures followed in the case. The Committee also noted that the situation was under regular review and that the mother had been given the opportunity to retain access to her children. In the circumstances, the Committee found that the interference with the complainant's family had not been unlawful or arbitrary and was thus not a violation of article 17 of the Covenant. Similarly, the Committee concluded that there had been no breach of articles 23 and 24 of the Covenant.

154. In case No. 687/1996 (Rojas García v. Colombia), the author and his family had been subjected to a house search in connection with a police investigation into the murder of the town's mayor. In finding a violation of article 17 of the Covenant, the Committee observed that:

> "The Committee must first determine whether the specific circumstances of the raid on the Rojas García family's house (hooded men entering through the roof at 2 a.m.) constitute a violation of article 17 of the Covenant. By submission of 28 December 1999, the State party reiterates that the raid on the Rojas García family's house was carried out according to the letter of the law, in accordance with article 343 of the Code of Criminal Procedure. The Committee does not enter into the question of the legality of the raid; however, it considers that, under article 17 of the Covenant, it is necessary for any interference in the home not only to be lawful, but also not to be arbitrary. The Committee considers, in accordance with its General Comment No. 16 (see HRI/GEN/1/Rev.5 of 26 April 2001) that the concept of arbitrariness in article 17 is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. It further considers that the State party's arguments fail to justify the conduct described. Consequently, the Committee concludes that there has been a violation of article 17, paragraph 1, insofar as there was arbitrary interference in the home of the Rojas García family" (annex X, sect. D, para. 10.3).

155. In case No. 930/2000 (Winata v. Australia), the Committee held that the deportation of the parents of an Australian child would violate article 17, paragraph 1, in conjunction with articles 23 and 24 of the Covenant:

> "In the present case, the Committee considers that a decision of the State party to deport two parents and to compel the family to choose whether a 13-year-old child, who has attained citizenship of the State party after living there 10 years, either remains alone in the State party or accompanies his parents is to be considered interference with the family, at least in circumstances where, as here, substantial changes to long-settled family life would follow in either case. The issue thus arises whether or not such interference would be arbitrary and contrary to article 17 of the Covenant" (annex X, sect. T, para. 7.2).

"It is certainly unobjectionable under the Covenant that a State party may require, under its laws, the departure of persons who remain in its territory beyond limited duration permits. Nor is the fact that a child is born, or that by operation of law such a child receives citizenship either at birth or at a later time, sufficient of itself to make a proposed deportation of one or both parents arbitrary. Accordingly, there is significant scope for States parties to enforce their immigration policy and to require departure of unlawfully present persons. That discretion is however not unlimited and may come to be exercised arbitrarily in certain circumstances. In the present case, both authors have been in Australia for over 14 years. The authors' son has grown in Australia from his birth 13 years ago, attending Australian schools as an ordinary child would and developing the social relationships inherent in that. In view of this duration of time, it is incumbent on the State party to demonstrate additional factors justifying the removal of both parents that go beyond a simple enforcement of its immigration law in order to avoid a characterization of arbitrariness. In the particular circumstances, therefore, the Committee considers that the removal by the State party of the authors would constitute, if implemented, arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all of the alleged victims, and, additionally, a violation of article 24, paragraph 1, in relation to Barry Winata due to a failure to provide him with the necessary measures of protection as a minor" (annex X, sect. T, para. 7.3).

156. Four Committee members appended a dissenting opinion arguing that the deportation would not constitute arbitrary interference with family life nor entail a violation of articles 17, 23 and 24 of the Covenant.

**(l) Freedom of thought, conscience and religion (Covenant, article 18)**

157. Article 18 protects the right to freedom of thought, conscience and religion. Paragraph 3 of article 18 provides that the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights of others.

158. In case No. 736/1997 (Ross v. Canada), the complainant argued that his opinions were of a religious character and invoked article 18 of the Covenant. The Committee, however, considered that the manifestation of beliefs may be subject to limitations and that in the circumstances of the case there had been no violation of article 18.

**(m) Freedom of opinion (Covenant, article 19)**

159. Article 19 provides for the right to freedom of opinion and expression. According to paragraph 3 of article 19 these rights may only be restricted as provided by law and when necessary for respect of the rights or reputations of others or for the protection of national security or public order (ordre public), or of public health or morals. In case No. 736/1997 (Ross v. Canada), the complainant claimed that his removal constituted also a violation of his right to freedom of expression. He argued that he had never expressed his views in class but only off-duty. After having examined the information before it, the Committee concluded that the removal did restrict the complainant's freedom of expression, but that this restriction was

provided for by the law, as found by the Supreme Court of Canada in the case. With regard to the question whether the restrictions were applied for the purposes recognized by the Covenant, and if so, whether they were necessary, the Committee considered:

> "When assessing whether the restrictions placed on the author's freedom of expression were applied for the purposes recognized by the Covenant, the Committee begins by noting that the rights or reputations of others for the protection of which restrictions may be permitted under article 19 may relate to other persons or to a community as a whole. For instance, and as held in Faurisson v. France, restrictions may be permitted on statements which are of a nature as to raise or strengthen anti-Semitic feeling, in order to uphold the Jewish communities' right to be protected from religious hatred. Such restrictions also derive support from the principles reflected in article 20.2 of the Covenant. The Committee notes that both the Board of Inquiry and the Supreme Court found that the author's statements were discriminatory against persons of the Jewish faith and ancestry and that they denigrated the faith and beliefs of Jews and called upon true Christians to not merely question the validity of Jewish beliefs and teachings but to hold those of the Jewish faith and ancestry in contempt as undermining freedom, democracy and Christian beliefs and values. In view of the findings as to the nature and effect of the author's public statements, the Committee concludes that the restrictions imposed on him were for the purpose of protecting the 'rights or reputations' of persons of Jewish faith, including the right to have an education in the public school system free from bias, prejudice and intolerance.
>
> "The final issue before the Committee is whether the restriction on the author's freedom of expression was necessary to protect the right or reputations of persons of the Jewish faith. In the circumstances, the Committee recalls that the exercise of the right to freedom of expression carries with it special duties and responsibilities. These special duties and responsibilities are of particular relevance within the school system, especially with regard to the teaching of young students. In the view of the Committee, the influence exerted by schoolteachers may justify restraints in order to ensure that legitimacy is not given by the school system to the expression of views which are discriminatory. In this particular case, the Committee takes note of the fact that the Supreme Court found that it was reasonable to anticipate that there was a causal link between the expressions of the author and the 'poisoned school environment' experienced by Jewish children in the school district. In that context, the removal of the author from a teaching position can be considered a restriction necessary to protect the right and freedom of Jewish children to have a school system free from bias, prejudice and intolerance. Furthermore, the Committee notes that the author was appointed to a non-teaching position after only a minimal period on leave without pay and that the restriction thus did not go any further than that which was necessary to achieve its protective functions. The Human Rights Committee accordingly concludes that the facts do not disclose a violation of article 19" (annex X, sect. F, paras. 11.5-11.6).

**(n) The right to take part in the conduct of public affairs, to participate in elections, to have access to public service (Covenant, article 25)**

160. In case No. 884/1999 (Ignatane v. Latvia), the author claimed that she had been arbitrarily disqualified from running for elective office. In finding a violation of article 25, the Committee observed that:

> "the decision of a single inspector, taken a few days before the elections and contradicting a language aptitude certificate issued some years earlier, for an unlimited period, by a board of Latvian language specialists, was enough for the Election Commission to decide to strike the author off the list of candidates for the municipal elections. The Committee notes that the State party does not contest the validity of the certificate as it relates to the author's professional position, but argues on the basis of the results of the inspector's review in the matter of the author's eligibility. The Committee also notes that the State party has not contested counsel's argument that Latvian law does not provide for separate levels of proficiency in the official language in order to stand for election, but applies the standards and certification used in other instances. The results of the review led to the author's being prevented from exercising her right to participate in public life in conformity with article 25 of the Covenant. The Committee notes that the first examination, in 1993, was conducted in accordance with formal requirements and was assessed by five experts, whereas the 1997 review was conducted in an ad hoc manner and assessed by a single individual. The annulment of the author's candidacy pursuant to a review that was not based on objective criteria and which the State party has not demonstrated to be procedurally correct is not compatible with the State party's obligations under article 25 of the Covenant. The Committee concludes that Mrs. Ignatane has suffered specific injury in being prevented from standing for the local elections in the city of Riga in 1997, because of having been struck off the list of candidates on the basis of insufficient proficiency in the official language. The Human Rights Committee considers that the author is a victim of a violation of article 25, in conjunction with article 2 of the Covenant" (annex X, sect. S, paras. 7.4, 7.5).

**(o) The right to equality before the law and the prohibition of discrimination (Covenant, article 26)**

161. Article 26, of the Covenant guarantees equality before the law and prohibits discrimination. In case No. 675/1995 (Toala et al. v. New Zealand), the complainants were citizens of Western Samoa. Following a judgement by the Privy Council in July 1982, they nominally became New Zealand citizens. Later in 1982, the Citizenship (Western Samoa) Act nullified the effect of the Privy Council decision. As to the complainants' claim that this Act was discriminatory, the Committee observed that the Act applied only to those Western Samoans who were not resident in New Zealand and that the complainants at that time were not resident in New Zealand and had no ties with that country. Accordingly, there was no basis for concluding that the application of the Act to the authors was discriminatory contrary to article 26 of the Covenant.

162. The right to equality before the courts, protected in article 14, paragraph 1, is also protected by the more general equality provision in article 26. In case No. 819/1998

(Kavanagh v. Ireland), the Committee had to consider under which conditions the State party's authorities may refer some cases to special courts, and whether appropriate guidelines exist to prevent discrimination. In finding a violation on article 26, the Committee observed that:

> "the Director of Public Prosecution's decision to charge the author before the Special Criminal Court resulted in the author facing an extraordinary trial procedure before an extraordinarily constituted court. This distinction deprived the author of certain procedures under domestic law, distinguishing the author from others charged with similar offences in the ordinary courts. Within the jurisdiction of the State party, trial by jury in particular is considered an important protection, generally available to accused persons. Under article 26, the State party is therefore required to demonstrate that such a decision to try a person by another procedure was based upon reasonable and objective grounds. In this regard, the Committee notes that the State party's law, in the Offences Against the State Act, sets out a number of specific offences which can be tried before a Special Criminal Court at the DPP's option. It provides also that any other offence may be tried before a Special Criminal Court if the DPP is of the view that the ordinary courts are 'inadequate to secure the effective administration of justice'. The Committee regards it as problematic that, even assuming that a truncated criminal system for certain serious offences is acceptable so long as it is fair, Parliament through legislation set out specific serious offences that were to come within the Special Criminal Court's jurisdiction in the DPP's unfettered discretion ('thinks proper'), and goes on to allow, as in the author's case, any other offences also to be so tried if the DPP considers the ordinary courts inadequate. No reasons are required to be given for the decisions that the Special Criminal Court would be 'proper', or that the ordinary courts are 'inadequate', and no reasons for the decision in the particular case have been provided to the Committee. Moreover, judicial review of the DPP's decisions is effectively restricted to the most exceptional and virtually undemonstrable circumstances" (annex X, sect. J, para. 10.2).

163. In case No. 855/1999 (Schmitz-de Jong v. the Netherlands) an author had claimed discrimination on the ground of age. Finding no violation, the Committee argued:

> "The author has claimed that she is a victim of discrimination on the ground of age, because as a 44-year-old (in 1993) she was not entitled to a senior citizen's partner's pass, which was only provided to partners of 60 years and older. The Committee recalls that a distinction does not constitute discrimination if it is based on objective and reasonable criteria. In the present case, the Committee finds that the age limitation of allowing only partners who have reached the age of 60 years to obtain an entitlement to various rate reductions as a partner to a pensioner above the age of 65 years is an objective criterion of differentiation and that the application of this differentiation in the case of the author was not unreasonable" (annex X, sect. O, para. 7.2).

**(p) Minority rights (Covenant, article 27)**

164. Article 27 provides that persons belonging to ethnic, religious or linguistic minorities, shall not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

165. In case No. 547/1993 (Mahuika et al. v. New Zealand), the complainants belonged to the Maori people of New Zealand. They claimed that the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 violated their rights under article 27. The 1992 Act was based on a settlement which had been negotiated between the Government and Maori representatives and was intended to settle all Maori claims, current and future, to commercial fishing rights. Pursuant to the Act, Maori were given a 50 per cent stake in a major New Zealand fishing company, as well as 20 per cent of quota issued under the Quota Management System. The complainants stated that they did not agree with the settlement, that fishing was one of the main elements of their traditional culture and that they desired to manifest their culture through fishing to the fullest extent of their traditional territories. In examining the merits of the claim, the Committee accepted that the use and control of fisheries was an essential element of the culture of the minority to which the complainants belonged and it recalled that economic activities might come under the protection of article 27, if they were an essential element of the culture. The Committee considered further:

> "In its case law under the Optional Protocol, the Committee has emphasized that the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy.[4] The Committee acknowledges that the Treaty of Waitangi (Fisheries Settlement) Act 1992 and its mechanisms limit the rights of the authors to enjoy their own culture.
>
> "The Committee notes that the State party undertook a complicated process of consultation in order to secure broad Maori support to a nationwide settlement and regulation of fishing activities. Maori communities and national Maori organizations were consulted and their proposals did affect the design of the arrangement. The Settlement was enacted only following the Maori representatives' report that substantial Maori support for the Settlement existed. For many Maori, the Act was an acceptable settlement of their claims. The Committee has noted the authors' claims that they and the majority of members of their tribes did not agree with the Settlement and that they claim that their rights as members of the Maori minority have been overridden. In such circumstances, where the right of individuals to enjoy their own culture is in conflict with the exercise of parallel rights by other members of the minority group, or of the minority as a whole, the Committee may consider whether the limitation in issue is in the interests of all members of the minority and whether there is reasonable and objective justification for its application to the individuals who claim to be adversely affected."[5]

166. After having carefully examined the conditions and effects of the Settlement, the Committee concluded that the Settlement and its enactment were compatible with article 27.

## G. Remedies called for under the Committee's Views

167. After the Committee has made a finding of a violation of a provision of the Covenant in its Views under article 5, paragraph 4, of the Optional Protocol, it proceeds to ask the State party to take appropriate steps to remedy the violation, such as commutation of sentence, release or providing adequate compensation for the violation suffered. When recommending a remedy, the Committee observes that:

> "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy in the case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views."

168. During the period under review the Committee recommended in its Views in case No. 857/1999 (Blazek et al. v. Czech Republic) that the State party:

> "provide the authors with an effective remedy, including an opportunity to file a new claim for restitution or compensation. The Committee further encourages the State party to review its relevant legislation and administrative practices to ensure that neither the law nor its application entails discrimination in contravention with article 26 of the Covenant" (annex X, sect. P, para. 7). "With regard to the dissemination of its Views, the Committee also requested the State party to translate them into the Czech language and to publish them" (annex X, sect. P, para. 9).

169. In case No. 930/2000 (Winata v. Australia), which concerned the threatened deportation of the parents of an Australian child, the Committee defined an effective remedy as:

> "including refraining from removing the authors from Australia before they have had an opportunity to have their application for parent visas examined with due consideration given to the protection required by Barry Winata's status as a minor" (annex X, sect. T, para. 9).

170. In cases Nos. 839/1998, 840/1998 and 841/1998 (Mansaraj et al. v. Sierra Leone), where 6 of the 18 authors had been sentenced to death but not executed, and 12 of the authors had been executed, the Committee made the following recommendation:

> "The State party is under an obligation to provide Anthony Mansaraj, Alpha Saba Kamara, Nelson Williams, Beresford R. Harleston, Bashiru Conteh and Arnold H. Bangura with an effective remedy. These authors were sentenced on the basis of a trial that failed to provide the basic guarantees of a fair trial. The Committee considers, therefore, that they should be released unless Sierra Leonian law provides for the possibility of fresh trials that do offer all the guarantees required by article 14 of the Covenant. The Committee also considers that the next of kin of

Gilbert Samuth Kandu-Bo, Khemalai Idrissa Keita, Tamba Gborie, Alfred Abu Sankoh (alias Zagalo), Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King, and Jim Kelly Jalloh should be afforded an appropriate remedy, which should entail compensation" (annex X, sect. M, para. 6.3).

171. In case No. 821/1998 (Chongwe v. Zambia), the author had been shot and seriously wounded in the course of an assassination attempt reportedly carried out by the Zambian police. The Committee held that articles 6.1, and 9.1 of the Covenant had been violated and recommended that the State party:

"provide Mr. Chongwe with an effective remedy and ... take adequate measures to protect his personal security and life from threats of any kind. The Committee urges the State party to carry out independent investigations of the shooting incident, and to expedite criminal proceedings against the persons responsible for the shooting. If the outcome of the criminal proceedings reveals that persons acting in an official capacity were responsible for the shooting and hurting of the author, the remedy should include damages to Mr. Chongwe" (annex X, sect. K, para. 7).

172. In case No. 630/1995 (Mazou v. Cameroon), the author had been dismissed from his post as a magistrate and reinstated at the same level after 14 years. The Committee found that the remedy was not sufficient and recommended that the State party ensure, pursuant to the laws of Cameroon, that the author have full reestablishment of his career, which would entail reinstatement at the level he would have had but for his illegal dismissal" (annex X, sect. B, para. 9).

173. The Committee may also fix a sum for compensation. In case No. 780/1997 (Laptsevich v. Belarus), the Committee stated:

"the State party is under an obligation to provide Mr. Laptsevich with an effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author" (A/55/40, vol. I, para. 594; vol. II, annex IX, sect. P, para. 10).

174. The compliance by States with these recommendations is monitored by the Committee through its follow-up procedure, as described in chapter VI of the present report.

## CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

175. From its seventh session, in 1979, to the conclusion of its seventy-second session, in July 2001, the Human Rights Committee has adopted 368 Views on communications considered under the Optional Protocol. The Committee found violations in 283 of them.

176. During its thirty-ninth session, in July 1990, the Committee established a procedure whereby it could monitor the follow-up to its Views under article 5, paragraph 4, and it created the mandate of a special rapporteur for the follow-up on Views (A/45/40, Annex XI). Ms. Christine Chanet assumed the duties of Special Rapporteur for the follow-up on Views from the Committee's sixty-eighth session, in March 2000 until the seventy-first session, in March 2001, when Mr. Nisuke Ando succeeded her.

177. The Special Rapporteur began to request follow-up information from States parties in 1991. Follow-up information has been systematically requested in respect of all Views with a finding of a violation of the Covenant. At the conclusion of the Committee's seventy-second session, follow-up information had been received in respect of 198 Views. No information had been received in respect of 75 Views. In 10 cases, the deadline for receipt of follow-up information had not yet expired. In many instances, the secretariat has also received information from authors to the effect that the Committee's Views had not been implemented. Conversely, in rare instances, the author of a communication has informed the Committee that the State party had given effect to the Committee's recommendations, although the State party had not itself provided that information.

178. Attempts to categorize follow-up replies are necessarily subjective and imprecise. Roughly 30 per cent of the replies received could be considered satisfactory in that they display the State party's willingness to implement the Committee's Views or to offer the applicant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or merely relate to one aspect of them. Certain replies simply indicate that the victim has failed to file a claim for compensation within statutory deadlines and that no compensation can therefore be paid to the victim.

179. The remainder of the replies either explicitly challenge the Committee's findings, on either factual or legal grounds, constitute much-belated submissions on the merits of the case, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

**Angola:** Views in one case finding violations of the Covenant:

711/1996 - Dias (A/55/40); no follow-up reply. On 21 January 2001 the author visited OHCHR and informed that the State party had not implemented the Committee's recommendations.

**Argentina:** Views in one case finding violations:

400/1990 - Mónaco de Gallichio (A/50/40); for follow-up reply, see A/51/40, paragraph 455.

**Australia:** Two Views finding violations:

488/1992 - Toonen (A/49/40); for follow-up reply, see A/51/40, paragraph 456;

560/1993 - A. (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and below.

**Austria:** Two Views finding violations:

415/1990 - Pauger (A/47/40), for follow-up reply, see A/52/40, paragraph 524;

716/1996 - Pauger (A/54/40); for follow-up reply, see A/55/40, paragraph 606.

**Belarus:** Views in one case finding violations:

780/1997 - Laptsevich (A/55/40); for follow-up reply see below.

**Bolivia:** Two Views finding violations:

176/1984 - Peñarrieta (A/43/40); for follow-up reply, see A/52/40, paragraph 530;

336/1988 - Bizouarne and Fillastre (A/47/40); for follow-up reply, see A/52/40, paragraph 531.

**Cameroon:** Views in one case finding violations:

458/1991 - Mukong (A/49/40); follow-up reply remains outstanding. See A/52/40, paragraphs 524, 532.

**Canada:** Eight Views concerning nine cases finding violations:

24/1977 - Lovelace (in Selected Decisions, vol. 1); for State party's follow-up reply, see Selected Decisions, vol. 2, annex I;

27/1978 - Pinkney (in Selected Decisions, vol. 1); no follow-up reply received;

167/1984 - Ominayak (A/45/40); follow-up reply, dated 25 November 1991, unpublished;

359/1989 and 385/1989 - Ballantyne and Davidson, and McIntyre (A/48/40); follow-up reply, dated 2 December 1993, unpublished;

455/1991 - Singer (A/49/40); no follow-up reply required;

469/1991 - Ng (A/49/40); follow-up reply, dated 3 October 1994, unpublished;

633/1995 - Gauthier (A/54/40); for follow-up reply, see A/55/40, paragraph 607 and below;

694/1996 - Waldman (A/55/40); for follow-up reply, see A/55/40; paragraph 608 and below.

**Central African Republic:** Views in one case finding violations:

428/1990 - Bozize (A/49/40); for follow-up reply, see A/51/40, paragraph 457.

**Colombia:** Eleven Views finding violations:

For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441, and A/52/40, paragraphs 533-535;

563/1993 - Bautista (A/52/40). The Committee received a submission from the State party, dated 21 April 1997, forwarding a copy of resolution No. 11/96, adopted by a Ministerial Committee set up pursuant to enabling legislation No. 288 of 1996 on 11 September 1996, and which recommends that compensation be paid to the family of the victim. Further note dated 2 November 1999, stating that the case is pending before the Higher Military Tribunal. The State party mentions that some unspecified payment had been made to the family on an unspecified date.

| | |
|---|---|
| Colombia (cont'd) | 612/1995 - Arhuacos (A/52/40); no follow-up reply. Follow-up consultations were held during the sixty-seventh session; |
| | 687/1996 - Rojas García (annex X, section D); deadline for follow-up reply not yet expired. |
| Croatia: | Views in one case finding violations: |
| | 727/1996 - Paraga (annex X, section E); for follow-up reply, dated 27 July 2001, see below. |
| Czech Republic: | Two Views finding violations: |
| | 516/1992 - Simunek et al. (A/50/40); |
| | 586/1994 - Adam (A/51/40). For follow-up replies, see A/51/40, paragraph 458. One author (in Simunek) has confirmed that the Committee's recommendations were implemented, the others complained that their property was not restored to them or that they were not compensated. Follow-up consultations were held during the sixty-first and sixty-sixth sessions (see A/53/40, para. 492, and A/54/40, para. 465). |
| Democratic Republic of the Congo (formerly Zaire): | Nine Views concerning 10 cases finding violations: |
| | 16/1977 - Mbenge et al.; |
| | 90/1981 - Luyeye; |
| | 124/1982 - Muteba; |
| | 138/1983 - Mpandanjila et al.; |
| | 157/1983 - Mpaka Nsusu; and |
| | 194/1985 - Miango (Selected Decisions, vol. 2); |
| | 241/1987 and 242/1987 - Birindwa and Tshisekedi (A/45/40); |
| | 366/1989 - Kanana (A/49/40); |
| | 542/1993 – Tshishimbi (A/51/40). |
| | No follow-up reply has been received in respect of any of the above cases, in spite of reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not |

| | |
|---|---|
| Democratic Republic of the Congo (formerly Zaire): (cont'd) | establish contact with the Permanent Mission of Zaire, with a view to discuss follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of Zaire to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply. |
| Dominican Republic: | Three Views finding violations:<br><br>188/1984 - Portorreal (in Selected Decisions, vol. 2); for State party's follow-up reply, see A/45/40, vol. II, annex XII; 193/1985 - Giry (A/45/40);<br><br>449/1991 - Mojica (A/49/40); follow-up reply in the latter two cases has been received but is incomplete in respect of Giry. Follow-up consultations with the Permanent Mission of the Dominican Republic to the United Nations were conducted during the fifty-seventh and fifty-ninth sessions (see A/52/40, para. 538). |
| Ecuador: | Five Views finding violations:<br><br>238/1987 - Bolaños (A/44/40); for follow-up reply, see A/45/40, vol. II, annex XII, sect. B;<br><br>277/1988 - Terán Jijón (A/47/40); follow-up reply, dated 11 June 1992, unpublished;<br><br>319/1988 - Cañón García (A/47/40); no follow-up reply received;<br><br>480/1991 - Fuenzalida (A/51/40);<br><br>481/1991 - Ortega (A/52/40); for follow-up reply in the latter two cases, dated 9 January 1998, see A/53/40, paragraph 494. Follow-up consultations with the Permanent Mission of Ecuador to the United Nations Office at Geneva were conducted during the sixty-first session (see A/53/40, para. 493). For further follow-up replies, dated 29 January and 14 April 1999, see A/54/40, paragraph 466. |
| Equatorial Guinea: | Two Views finding violations:<br><br>414/1990 - Primo Essono; and<br><br>468/1991 - Oló Bahamonde (A/49/40). Follow-up reply remains outstanding in both cases, in spite of consultations with the Permanent Mission of Equatorial Guinea to the United Nations during the fifty-sixth and fifty-ninth sessions (see A/51/40, paras. 442-444 and A/52/40, para. 539). |

**Finland:** Four Views finding violations:

265/1987 - Vuolanne (A/44/40); for follow-up reply, see A/44/40, paragraph 657 and annex XII;

291/1988 - Torres (A/45/40); for follow-up reply, see A/45/40, vol. II, annex XII, sect. C;

387/1989 - Karttunen (A/48/40); for follow-up reply, dated 20 April 1999, see A/54/40, paragraph 467;

412/1990 - Kivenmaa (A/49/40); preliminary follow-up reply, dated 13 September 1994, unpublished; for further follow-up reply, dated 20 April 1999 see A/54/40, paragraph 468.

**France:** Six Views finding violations:

196/1985 - Gueye et al. (A/44/40); for follow-up reply see A/51/40, paragraph 459;

549/1993 - Hopu (A/52/40); for follow-up reply see A/53/40, paragraph 495;

666/1995 – Foin (A/55/40); no follow-up reply required;

689/1996 - Maille (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the law under consideration has been changed

690/1996 and 691/1996 - Venier and Nicolas (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the law under consideration has been changed.

**Georgia:** Four Views finding violations:

623/1995 - Domukovsky;

624/1995 - Tsiklauri;

626/1995 - Gelbekhiani;

627/1995 - Dokvadze (A/53/40); for follow-up replies, dated 19 August and 27 November 1998, see A/54/40, paragraph 469.

Guyana: Views in one case finding violations:

676/1996 - Yasseen and Thomas (A/53/40); no follow-up reply received. In several letters, the last dated 23 August 1998, the authors' legal representative expresses concern that the Legal Affairs Minister of Guyana has recommended to his Government not to comply with the Committee's decision. In a letter dated 14 June 2000, the father of Yasseen informs the Committee that its recommendations have not been fulfilled so far. In a letter dated 6 November 2000, the same information is provided by Interights, the authors' legal representative.

Hungary: Two Views finding violations:

410/1990 - Párkányi (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

521/1992 - Kulomin (A/51/40); for follow-up reply, see A/52/40, paragraph 540.

Ireland: Views in one case finding violations:

819/1998 - Kavanagh (annex X, sect. J); follow-up reply, dated 1 August 2001, proposing a payment of £1,000 to Mr. Kavanagh.

Italy: Views in one case finding violations:

699/1996 - Malcki (A/54/40); for follow-up reply, see A/55/40, paragraph 610.

Jamaica: Ninety-one Views finding violations:

25 detailed follow-up replies received, of which 19 indicate that the State party will not implement the Committee's recommendations, two promise to investigate and one announces the author's release (see A/54/40, para. 470); 36 general replies, indicating merely that the authors' death sentences had been commuted. No follow-up replies in 30 cases. Follow-up consultations with the State party's Permanent Representatives to the United Nations and to the United Nations Office at Geneva were conducted during the fifty-third, fifty-fifth, fifty-sixth and sixtieth sessions. Prior to the Committee's fifty-fourth session, the Special Rapporteur for the follow-up on Views conducted a follow-up fact-finding mission to Jamaica (A/50/40, paras. 557-562). See further A/55/40, paragraph 611, and below. Note verbale of 4 July 2001 concerning case No. 668/1995, see below.

**Libyan Arab Jamahiriya:** Views in one case finding violations:

440/1990 - El-Megreisi (A/49/40); follow-up reply remains outstanding. The author has informed the Committee that his brother was released in March 1995. Compensation remains outstanding.

**Madagascar:** Four Views finding violations:

49/1979 - Marais;

115/1982 - Wight;

132/1982 - Jaona; and

155/1983 - Hammel (in Selected Decisions, vol. 2); follow-up replies remain outstanding in all four cases; the authors of the two first cases informed the Committee that they were released from detention. Follow-up consultations with the Permanent Mission of Madagascar to the United Nations were held during the fifty-ninth session (A/52/40, para. 543).

**Mauritius:** Views in one case finding violations:

35/1978 - Aumeeruddy-Cziffra et al.(in Selected Decisions, vol. 1); for follow-up reply, see Selected Decisions, vol. 2, annex I.

**Namibia:** Views in one case finding violations:

760/1997 - Rehoboth (A/55/40); no follow-up reply received.

**Netherlands:** Six Views finding violations:

172/1984 - Broeks (A/42/40); follow-up reply, dated 23 February 1995, unpublished;

182/1984 - Zwaan-de Vries (A/42/40); follow-up reply, unpublished;

305/1988 - van Alphen (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708;

453/1991 - Coeriel (A/50/40); follow-up reply, dated 28 March 1995, unpublished;

786/1997 - Vos (A/54/40); for follow-up reply, see A/55/40, paragraph 612;

846/1999 - Jansen-Gielen (annex X, sect. N); deadline for follow-up reply not yet expired.

| | |
|---|---|
| Nicaragua: | Views in one case finding violations: |
| | 328/1988 - Zelaya Blanco (A/49/40); for follow-up reply, see below. |
| Norway: | Views in one case finding violations: |
| | 631/1995 - Spakmo (A/55/40); for follow-up reply, see A/55/40, paragraph 613. |
| Panama: | Two Views finding violations: |
| | 289/1988 - Wolf (A/47/40); |
| | 473/1991 - Barroso (A/50/40). For follow-up replies, dated 22 September 1997, see A/53/40, paragraphs 496 and 497. |
| Peru: | Six Views finding violations: |
| | 202/1986 - Ato del Avellanal (A/44/40); |
| | 203/1986 - Muñoz Hermosa (A/44/40); |
| | 263/1987 - González del Río (A/48/40); |
| | 309/1988 - Orihuela Valenzuela (A/48/40); for follow-up reply in these four cases, see A/52/40 paragraph 546; |
| | 540/1993 - Laureano (A/51/40); follow-up reply remains outstanding; |
| | 577/1994 - Polay Campos (A/53/40); for follow-up reply, see A/53/40, paragraph 498. |
| Republic of Korea: | Three Views finding violations: |
| | 518/1992 - Sohn (A/50/40); follow-up reply remains outstanding (see A/51/40, paras. 449 and 450; A/52/40, paras. 547 and 548); |
| | 574/1994 - Kim (A/54/40); no follow-up reply received; |
| | 628/1995 – Park (A/54/40); for follow-up reply, see A/54/40, paragraph 471. |
| Russian Federation: | Views in one case finding violations: |
| | 770/1997 - Gidrin (A/55/40); no follow-up reply received. |

| | |
|---|---|
| Saint Vincent and the Grenadines: | Views in one case finding violations: |
| | 806/1998 - Thompson (annex X, sect. H); no follow-up reply received. |
| Senegal: | Views in one case finding violations: |
| | 386/1989 - Famara Koné (A/50/40); for follow-up reply, see A/51/40, paragraph 461. See also summary record of the 1619th meeting, held on 21 October 1997 (CCPR/C/SR.1619). |
| Spain: | Three Views finding violations: |
| | 493/1992 - Griffin (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings; |
| | 526/1993 - Hill (A/52/40); for follow-up reply, see A/53/40, paragraph 499, and below. |
| | 701/1996 - Gómez (A/55/40); for follow-up reply see below. |
| Suriname: | Views concerning eight cases with findings of violations: |
| | 146/1983 and 148-154/1983 - Baboeram et al. (in Selected Decisions, vol. 2); consultations held during the fifty-ninth session (see A/51/40, paragraph 451, and A/52/40, paragraph 549); for follow-up reply, see A/53/40, paragraphs. 500-501. For follow-up consultations during the Committee's sixty-eighth session, see A/55/40, paragraph 614. |
| Togo: | Two Views concerning four cases with findings of violations: |
| | 422-424/1990 - Aduayom et al.; and |
| | 505/1992 - Ackla (A/51/40). Follow-up replies on both Views remain outstanding; see also below. |
| Trinidad and Tobago: | Twelve Views finding violations: |
| | 232/1987 and 512/1992 - Pinto (A/45/40 and A/51/40); |
| | 362/1989 - Soogrim (A/48/40); |
| | 447/1991 - Shalto (A/50/40); |
| | 434/1990 - Seerattan (A/51/40); |
| | 523/1992 - Neptune (A/51/40); |

| | |
|---|---|
| Trinidad and Tobago (cont'd): | 533/1993 - Elahie (A/52/40); and<br><br>554/1993 - LaVende,<br><br>555/1993 - Bickaroo,<br><br>569/1993 - Matthews and<br><br>672/1995 - Smart (A/53/40);<br><br>594/1992 - Phillip and<br><br>752/1997 - Henry (A/54/40). Follow-up replies received in respect of Pinto, Shalto, Neptune and Seerattan. Follow-up replies on the remainder of the cases are outstanding. Follow-up consultations were conducted during the sixty-first session (A/53/40, paras. 502-507); see also A/51/40, paragraphs 429, 452, 453, and A/52/40, paragraphs 550-552. |
| Uruguay: | Forty-five Views finding violations:<br><br>43 follow-up replies received, dated 17 October 1991, unpublished. Follow-up reply, dated 31 May 2000, concerning case No. 110/1981 Viana Acosta, granting payment of US$ 120,000 to Mr. Viana. Follow-up replies on two Views remain outstanding: 159/1983 - Cariboni (in Selected Decisions, vol. 2) and 322/1988 - Rodríguez (A/49/40); see also A/51/40, paragraph 454. |
| Venezuela: | Views in one case finding violations:<br><br>156/1983 - Solórzano (in Selected Decisions, vol. 2); follow-up reply, dated 21 October 1991, unpublished. |
| Zambia: | Five Views finding violations:<br><br>314/1988 - Bwalya; and<br><br>326/1988 - Kalenga (A/48/40);<br><br>390/1990 - Lubuto (A/51/40);<br><br>768/1997 - Mukunto (A/54/40); follow-up reply, dated 3 April 1995, unpublished, received in respect of the first two decisions; follow-up replies in respect of the last two cases remain outstanding.<br><br>821/1998 - Chongwe (annex X, sec. K); follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non exhaustion of domestic remedies by Mr. Chongwe. The author by letter of 1 March 2001 indicates that the State party has not taken any measures pursuant to the Committee's Views. |

181. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-first session of the Committee (CCPR/C/71/R.13, dated 20 March 2001). Reference is also made to the Committee's previous reports, in particular A/55/40, paragraphs 596 to 617.

**Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments**

182. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

183. Australia: At a meeting between the Special Rapporteur and a delegation from the State party, on 21 July 2000, on the occasion of the Committee's consideration of Australia's third and fourth periodic reports, the State party's representatives stated that there had been changes in the administrative procedure and that detentions were now administratively reviewed. The Special Rapporteur requested a written update, which has not been received.

184. Austria: With regard to case No. 716/1996 - Pauger (A/54/40), the Special Rapporteur met with a representative of Austria on 25 July 2000 and stated that the State party could not invoke domestic legislation in order to justify a Covenant violation. The Mission would report to Vienna.

185. Belarus: With regard to case No. 780/1997 - Laptsevich, the Committee received a note verbale from the State party, dated 17 July 2000, stating that the competent authorities in Belarus were examining the validity of the Committee's Views. The State party pointed out that since this was the first decision received by Belarus from an international instance, it would have to assess how to comply with the Views without breaching its obligations of non-interference with the judiciary.

186. Canada: Following the Committee's Views in case No. 633/1995 - Gauthier, the Government of Canada informed the Committee on 20 October 1999 that it had appointed an independent expert to review the Press Gallery's criteria for accreditation as well as the author's application for accreditation. In order to address the Committee's concern that there be a possibility of recourse by individuals who are denied membership of the Press Gallery, in the future the Speaker of the House will be competent to receive complaints and appoint an independent expert to report to him about the validity of the complaint. By submission of 4 March 2000, the Government provided the Committee with a copy of the expert report on the Press Gallery's criteria for accreditation and their application in the author's case. The Special Rapporteur met with a representative of Canada on 18 July 2000. The Secretariat has requested

the State party to provide a copy of the Speaker's decision in the author's case. By letters of 9 October 2000 and of 7 March 2001, the author complains that the Views have not been implemented by the State party and refers to a letter he received from the House of Commons Law Clerk advising him that the Speaker of the House plays no part in respect of applications to the Press Gallery and that he would have to reapply with the Press Gallery. The author alleges that no appeal process is available.

187. With regard to case No. 694/1996 - Waldman, the Government of Canada informed the Committee, by note of 3 February 2000, that matters of education fall under the exclusive jurisdiction of the provinces. The Government of Ontario has communicated that it has no plans to extend funding to private religious schools or to the parents of children that attend such schools, and that it intends to adhere fully to its constitutional obligation to fund Roman Catholic schools. On 17 February 2000, the author sent a critical response to the State party's reply. He met with the Special Rapporteur on Monday, 13 March 2000. The Special Rapporteur met with a representative of Canada on 18 July 2000. In a further letter, dated 14 February 2001, the author again expresses his dissatisfaction with the State party's failure to implement the Views and asks the Committee to discuss Canada's non-compliance at a public meeting or in the context of a follow-up visit. He indicates that the Minister of Education of Ontario has stated that the Government of Ontario "is not prepared to adopt the alternatives suggested by the UNHRC for complying with the decision".

188. Croatia: With regard to case No. 727/1996 - Paraga, the Government of Croatia, by note verbale of 27 July 2001, informs the Committee that Mr. Paraga submitted a claim for compensation on 23 May 2001, which is now being considered, and that it will inform the Committee of the outcome of the proceedings.

189 Jamaica: With regard to case No. 680/1996 - Gallimore, the Committee received a note verbale dated 27 November 2000, informing the Committee that a Court of Appeal Judge has reheard the case (with the benefit of submissions made by Counsel) and has ruled that the author must serve 20 years as of 18 February 1988 before being eligible to apply for parole.

190. With regard to case No. 759/1997, Osbourne, the Committee received a note verbale, dated 24 November 2000, to the effect that the sentence of whipping had been remitted. By note verbale of 4 July 2001 concerning case No. 668/1995 - Smith and Stewart, the State party indicates that Mr. Smith is now eligible to apply for parole and that the date of eligibility was advanced by six years.

191. Netherlands: By submission of 25 October 1999 concerning case No. 786/1997 - Vos, the Government of the Netherlands informed the Committee that it had published the Committee's Views in the Official Gazette. However, at the same time it challenged the Committee's Views that the author had been a victim of discrimination and informed the Committee that it would not implement its recommendation. By note verbale, dated 9 November 2000, the State party informed the Committee that it was prepared to provide the author with compensation. However, the State party still challenges the Committee's Views. In a letter dated 12 November 1999 the author criticized the State party's response and asked for assistance. The Special Rapporteur met with a representative of the Netherlands during the seventieth session of the Committee, on 19 October 2000. By note verbale

dated 9 November 2000, the State party informed the Committee that it was granting compensation to the author for his costs and expenses incurred in the proceedings before the Committee.

192. Nicaragua: By submission of 23 July 2001, in respect of case No. 328/1988 - Zelaya the State party informed the Committee that in Nicaragua there is no special procedure for demanding compensation in cases of torture and ill-treatment. The author can, however, demand compensation through the ordinary courts pursuant to the Code of Civil Procedure. Compensation cannot be paid by virtue of an executive decree or administrative decision, but would require a judicial decision. With regard to the Committee's request that the State party carry out an official investigation into the torture and ill-treatment suffered by the author, the State party explains that in view of the many years that have elapsed since the violations, it is very difficult for the State party to carry out the necessary investigations, also taking into account that the Oficina de Seguridad de Estado no longer exists, the old prison authorities have been transferred elsewhere and certain amnesties are now in force.

193. Peru: With regard to case No. 202/1986 - Ato (A/44/40), the author informed the Committee by letters dated 1 October 1999 and 15 March 2001 that the State party had not implemented the Views.

194. Follow-up consultations were held during the fifty-seventh and seventieth sessions. Despite State party information about the activities of the "Consejo Nacional de Derechos Humanos", no concrete action appears to have been taken to implement the Committee's recommendations. The Special Rapporteur met with a representative of Peru on 24 October 2000, who said that the law had been changed and information would be provided in writing. The information has not been received.

195. With regard to case No. 203/1986 - Muñoz, the State party orally informed the Committee during the seventieth session that a remedy had been granted to the author. Written confirmation of this information and clarification of the nature of the remedy granted has not been provided.

196. Spain: With regard to case No. 526/1993 - Hill (A/52/40), the authors informed the Committee by letter dated 12 September 2000 that they were still awaiting decision with regard to their administrative claim for compensation, 27 months after it had first been initiated. They allege that this is a procedure which should not take more than eight months. It would appear from a press release of 22 January 2001 that the Spanish Constitutional Court has ruled that the Committee's Views must be regarded as new facts (hecho nuevo) and consequently the Supreme Court could review the case under the "Recurso extraordinario de revisión". Thus the authors could be granted an effective remedy, including compensation.

197. With regard to case No. 701/1996 - Gómez Vásquez (A/55/40), the State party submitted a note verbale dated 16 November 2000 contesting the Committee's Views by reference to the European Convention and to the interpretation that the European Court has made with regard to the French cassation. The submission refers to the use of article 121 of the Spanish Constitution as an effective remedy in cases where a violation has been established by an international body.

In this respect, the State party refers to the effective remedy that the victims of communication No. 526/1993 (Hill brothers) have allegedly received. Furthermore, consideration will be given to the Committee's Views in any future procedural reforms that might be undertaken.

198. By letter dated 2 February 2001, counsel responded to the State party's information by questioning the good faith of the response. He alleges that information has been withheld from the Committee with regard to the implementation of its Views. In this respect, counsel refers to a decision of the Spanish Supreme Court (Pleno de la Sala de lo Penal de Tribunal Supremo) where the Court ordered that: (a) in order to comply with the Committee's decision, the decision should be remitted to the Court that decided on appeal, for it to review the case; (b) that since Spanish cassation now complies with the requirements of article 14.5, all current cassation appeals need not be suspended; (c) and to avoid further possible misunderstanding before international bodies, it has remitted a report recommending the advisability of establishing an appeal prior to cassation. Counsel also provides the Committee with various press cuttings with regard to the echo that the decision had in the Spanish media, as well as the statements made by the Minister of Justice to the effect that due consideration would be given to the Committee's Views when new legislation was drafted on this issue.

199. Togo: With regard to case No. 505/1992 - Ackla (A/51/40), the author, by letter dated 4 December 2000, informed the Committee that his right to a fair hearing continued to be denied. He enclosed various documents in substantiation.

200. Zambia: The Special Rapporteur met with representatives of the Government of Zambia on 20 July 2001 and requested a formal reply concerning the three cases, Nos. 390/1990 Lubuto (A/51/40), 768/1997 Mukunto (A/54/40) and 821/1998 Chongwe (A/56/40), for which no follow-up reply had been received (other than the late submission of 23 January 2001 concerning domestic remedies allegedly not exhausted by the author). The representatives said that the request would be forwarded to the Government.

**Concern over the effectiveness of follow-up**

201. The Committee reconfirms that it will keep the functioning of the follow-up procedure under regular review. It recalls that States parties to the Optional Protocol have an obligation under article 2 of the Covenant to give effect to the Committee's Views (see chap. V, para. 168).

202. The Committee again expresses its regret that its recommendation, formulated in its five previous reports, to the effect that at least one follow-up mission per year be budgeted by the Office of the United Nations High Commissioner for Human Rights, has still not been implemented. Similarly, the Committee considers that staff resources to service the follow-up mandate remain inadequate, despite the Committee's repeated requests, and that this prevents the proper and timely conduct of follow-up activities, including follow-up missions and follow-up consultations. The Committee welcomes the High Commissioner's Plan of Action for improving the servicing of the treaty bodies, in particular the establishment of the Petitions Team, and expresses its hope that a full-time staff member will be assigned to service the follow-up mandate and that funds will be budgeted for follow-up missions.

## Notes

[1] The Covenant continues to apply by succession in one other State, Kazakhstan. See annex I, notes (d) and (e).

[2] Although as of the date of this report there are 98 States parties to the Optional Protocol, the Committee is competent to consider communications concerning 100 States, including two former States parties that have denounced the Optional Protocol pursuant to article 12. They are Jamaica, which denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998, and Trinidad and Tobago, which denounced the Optional Protocol on 27 March 2000, with effect from 27 June 2000. Thus, several communications concerning Jamaica submitted prior to 23 January 1998 and several communications concerning Trinidad and Tobago submitted prior to 27 June 2000 are still under consideration by the Committee.

[3] As it did in General Comment No. 10 and Communication No. 550/1993, Faurisson v. France, Views adopted on 8 November 1996.

[4] Committee's Views on case 511/1992, I. Länsman et al. v. Finland, paragraphs 9.6 and 9.8 (CCPR/C/52/D/511/1992).

[5] See the Committee's Views in case No. 197/1985, Kitok v. Sweden, adopted on 27 July 1988 (CCPR/C/33/D/197/1985).

## Annex I

## STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND TO THE OPTIONAL PROTOCOLS AND STATES WHICH HAVE MADE THE DECLARATION UNDER ARTICLE 41 OF THE COVENANT AS AT 27 JULY 2001

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| **A. States parties to the International Covenant on Civil and Political Rights (148)** | | |
| Afghanistan | 24 January 1983[a] | 24 April 1983 |
| Albania | 4 October 1991[a] | 4 January 1992 |
| Algeria | 12 September 1989 | 12 December 1989 |
| Angola | 10 January 1992[a] | 10 April 1992 |
| Argentina | 8 August 1986 | 8 November 1986 |
| Armenia | 23 June 1993[a] | [b] |
| Australia | 13 August 1980 | 13 November 1980 |
| Austria | 10 September 1978 | 10 December 1978 |
| Azerbaijan | 13 August 1992[a] | [b] |
| Bangladesh | 6 September 2000 | 6 December 2000 |
| Barbados | 5 January 1973[a] | 23 March 1976 |
| Belarus | 12 November 1973 | 23 March 1976 |
| Belgium | 21 April 1983 | 21 July 1983 |
| Belize | 10 June 1996[a] | 10 September 1996 |
| Benin | 12 March 1992[a] | 12 June 1992 |
| Bolivia | 12 August 1982[a] | 12 November 1982 |
| Bosnia and Herzegovina | 1 September 1993[c] | 6 March 1992 |
| Botswana | 8 September 2000 | 8 December 2000 |
| Brazil | 24 January 1992[a] | 24 April 1992 |
| Bulgaria | 21 September 1970 | 23 March 1976 |
| Burkina Faso | 4 January 1999[a] | 4 April 1999 |
| Burundi | 9 May 1990[a] | 9 August 1990 |
| Cambodia | 26 May 1992[a] | 26 August 1992 |
| Cameroon | 27 June 1984[a] | 27 September 1984 |
| Canada | 19 May 1976[a] | 19 August 1976 |
| Cape Verde | 6 August 1993[a] | 6 November 1993 |
| Central African Republic | 8 May 1981[a] | 8 August 1981 |
| Chad | 9 June 1995[a] | 9 September 1995 |
| Chile | 10 February 1972 | 23 March 1976 |
| Colombia | 29 October 1969 | 23 March 1976 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Congo | 5 October 1983[a] | 5 January 1984 |
| Costa Rica | 29 November 1968 | 23 March 1976 |
| Côte d'Ivoire | 26 March 1992[a] | 26 June 1992 |
| Croatia | 12 October 1992[c] | 8 October 1991 |
| Cyprus | 2 April 1969 | 23 March 1976 |
| Czech Republic | 22 February 1993[c] | 1 January 1993 |
| Democratic People's Republic of Korea | 14 September 1981[a] | 14 December 1981 |
| Democratic Republic of the Congo | 1 November 1976[a] | 1 February 1977 |
| Denmark | 6 January 1972 | 23 March 1976 |
| Dominica | 17 June 1993[a] | 17 September 1993 |
| Dominican Republic | 4 January 1978[a] | 4 April 1978 |
| Ecuador | 6 March 1969 | 23 March 1976 |
| Egypt | 14 January 1982 | 14 April 1982 |
| El Salvador | 30 November 1979 | 29 February 1980 |
| Equatorial Guinea | 25 September 1987[a] | 25 December 1987 |
| Estonia | 21 October 1991[a] | 21 January 1992 |
| Ethiopia | 11 June 1993[a] | 11 September 1993 |
| Finland | 19 August 1975 | 23 March 1976 |
| France | 4 November 1980[a] | 4 February 1981 |
| Gabon | 21 January 1983[a] | 21 April 1983 |
| Gambia | 22 March 1979[a] | 22 June 1979 |
| Georgia | 3 May 1994[a] | [b] |
| Germany | 17 December 1973 | 23 March 1976 |
| Ghana | 7 September 2000 | 7 December 2000 |
| Greece | 5 May 1997[a] | 5 August 1997 |
| Grenada | 6 September 1991[a] | 6 December 1991 |
| Guatemala | 6 May 1992[a] | 5 August 1992 |
| Guinea | 24 January 1978 | 24 April 1978 |
| Guyana | 15 February 1977 | 15 May 1977 |
| Haiti | 6 February 1991[a] | 6 May 1991 |
| Honduras | 25 August 1997 | 25 November 1997 |
| Hungary | 17 January 1974 | 23 March 1976 |
| Iceland | 22 August 1979 | 22 November 1979 |
| India | 10 April 1979[a] | 10 July 1979 |
| Iran, Islamic Republic of | 24 June 1975 | 23 March 1976 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Iraq | 25 January 1971 | 23 March 1976 |
| Ireland | 8 December 1989 | 8 March 1990 |
| Israel | 3 October 1991[a] | 3 January 1992 |
| Italy | 15 September 1978 | 15 December 1978 |
| Jamaica | 3 October 1975 | 23 March 1976 |
| Japan | 21 June 1979 | 21 September 1979 |
| Jordan | 28 May 1975 | 23 March 1976 |
| Kazakhstan[d] | | |
| Kenya | 1 May 1972[a] | 23 March 1976 |
| Kuwait | 21 May 1996[a] | 21 August 1996 |
| Kyrgyzstan | 7 October 1994[a] | [b] |
| Latvia | 14 April 1992[a] | 14 July 1992 |
| Lebanon | 3 November 1972[a] | 23 March 1976 |
| Lesotho | 9 September 1992[a] | 9 December 1992 |
| Libyan Arab Jamahiriya | 15 May 1970[a] | 23 March 1976 |
| Liechtenstein | 10 December 1998[a] | 10 March 1999 |
| Lithuania | 20 November 1991[a] | 20 February 1992 |
| Luxembourg | 18 August 1983 | 18 November 1983 |
| Madagascar | 21 June 1971 | 23 March 1976 |
| Malawi | 22 December 1993[a] | 22 March 1994 |
| Mali | 16 July 1974[a] | 23 March 1976 |
| Malta | 13 September 1990[a] | 13 December 1990 |
| Mauritius | 12 December 1973[a] | 23 March 1976 |
| Mexico | 23 March 1981[a] | 23 June 1981 |
| Monaco | 28 August 1997 | 28 November 1997 |
| Mongolia | 18 November 1974 | 23 March 1976 |
| Morocco | 3 May 1979 | 3 August 1979 |
| Mozambique | 21 July 1993[a] | 21 October 1993 |
| Namibia | 28 November 1994[a] | 28 February 1995 |
| Nepal | 14 May 1991 | 14 August 1991 |
| Netherlands | 11 December 1978 | 11 March 1979 |
| New Zealand | 28 December 1978 | 28 March 1979 |
| Nicaragua | 12 March 1980[a] | 12 June 1980 |
| Niger | 7 March 1986[a] | 7 June 1986 |
| Nigeria | 29 July 1993[a] | 29 October 1993 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Norway | 13 September 1972 | 23 March 1976 |
| Panama | 8 March 1977 | 8 June 1977 |
| Paraguay | 10 June 1992[a] | 10 September 1992 |
| Peru | 28 April 1978 | 28 July 1978 |
| Philippines | 23 October 1986 | 23 January 1987 |
| Poland | 18 March 1977 | 18 June 1977 |
| Portugal | 5 June 1978 | 15 September 1978 |
| Republic of Korea | 10 April 1990[a] | 10 July 1990 |
| Republic of Moldova | 26 January 1993[a] | [b] |
| Romania | 9 December 1974 | 23 March 1976 |
| Russian Federation | 16 October 1973 | 23 March 1976 |
| Rwanda | 16 April 1975[a] | 23 March 1976 |
| Saint Vincent and the Grenadines | 9 November 1981[a] | 9 February 1982 |
| San Marino | 18 October 1985[a] | 18 January 1986 |
| Senegal | 13 February 1978 | 13 May 1978 |
| Seychelles | 5 May 1992[a] | 5 August 1992 |
| Sierra Leone | 23 August 1996[a] | 23 November 1996 |
| Slovakia | 28 May 1993[c] | 1 January 1993 |
| Slovenia | 6 July 1992[c] | 25 June 1991 |
| Somalia | 24 January 1990[a] | 24 April 1990 |
| South Africa | 10 December 1998[a] | 10 March 1999 |
| Spain | 27 April 1977 | 27 July 1977 |
| Sri Lanka | 11 June 1980[a] | 11 September 1980 |
| Sudan | 18 March 1986[a] | 18 June 1986 |
| Suriname | 28 December 1976[a] | 28 March 1977 |
| Sweden | 6 December 1971 | 23 March 1976 |
| Switzerland | 18 June 1992[a] | 18 September 1992 |
| Syrian Arab Republic | 21 April 1969[a] | 23 March 1976 |
| Tajikistan | 4 January 1999[a] | 4 April 1999 |
| Thailand | 29 October 1996[a] | 29 January 1997 |
| The former Yugoslav Republic of Macedonia | 17 September 1991[c] | 17 September 1991 |
| Togo | 24 May 1984[a] | 24 August 1984 |
| Trinidad and Tobago | 21 December 1978[a] | 21 March 1979 |
| Tunisia | 18 March 1969 | 23 March 1976 |
| Turkmenistan | 1 May 1997[a] | [b] |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Uganda | 21 June 1995[a] | 21 September 1995 |
| Ukraine | 12 November 1973 | 23 March 1976 |
| United Kingdom of Great Britain and Northern Ireland | 20 May 1976 | 20 August 1976 |
| United Republic of Tanzania | 11 June 1976[a] | 11 September 1976 |
| United States of America | 8 June 1992 | 8 September 1992 |
| Uruguay | 1 April 1970 | 23 March 1976 [b] |
| Uzbekistan | 28 September 1995 | |
| Venezuela | 10 May 1978 | 10 August 1978 |
| Viet Nam | 24 September 1982[a] | 24 December 1982 |
| Yemen | 9 February 1987[a] | 9 May 1987 |
| Yugoslavia | 2 June 1971 | 23 March 1976[i] |
| Zambia | 10 April 1984[a] | 10 July 1984 |
| Zimbabwe | 13 May 1991[a] | 13 August 1991 |

In addition to the States parties listed above, the Covenant continues to apply in Hong Kong, Special Administrative Region, People's Republic of China, and Macao Special Administrative Region, People's Republic of China.[c]

**B. States parties to the Optional Protocol (98)**

| | | |
|---|---|---|
| Algeria | 12 September 1989[a] | 12 December 1989 |
| Angola | 10 January 1992[a] | 10 April 1992 |
| Argentina | 8 August 1986[a] | 8 November 1986 |
| Armenia | 23 June 1993[a] | 23 September 1993 |
| Australia | 25 September 1991[a] | 25 December 1991 |
| Austria | 10 December 1987 | 10 March 1988 |
| Barbados | 5 January 1973[a] | 23 March 1976 |
| Belarus | 30 September 1992[a] | 30 December 1992 |
| Belgium | 17 May 1994[a] | 17 August 1994 |
| Benin | 12 March 1992[a] | 12 June 1992 |
| Bolivia | 12 August 1982[a] | 12 November 1982 |
| Bosnia and Herzegovina | 1 March 1995 | 1 June 1995 |
| Bulgaria | 26 March 1992[a] | 26 June 1992 |
| Burkina Faso | 4 January 1999[a] | 4 April 1999 |
| Cameroon | 27 June 1984[a] | 27 September 1984 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Canada | 19 May 1976[a] | 19 August 1976 |
| Cape Verde | 19 May 2000[a] | 19 August 2000 |
| Central African Republic | 8 May 1981[a] | 8 August 1981 |
| Chad | 9 June 1995 | 9 September 1995 |
| Chile | 28 May 1992[a] | 28 August 1992 |
| Colombia | 29 October 1969 | 23 March 1976 |
| Congo | 5 October 1983[a] | 5 January 1984 |
| Costa Rica | 29 November 1968 | 23 March 1976 |
| Côte d'Ivoire | 5 March 1997 | 5 June 1997 |
| Croatia | 12 October 1995[a] | |
| Cyprus | 15 April 1992 | 15 July 1992 |
| Czech Republic | 22 February 1993[c] | 1 January 1993 |
| Democratic Republic of the Congo | 1 November 1976[a] | 1 February 1977 |
| Denmark | 6 January 1972 | 23 March 1976 |
| Dominican Republic | 4 January 1978[a] | 4 April 1978 |
| Ecuador | 6 March 1969 | 23 March 1976 |
| El Salvador | 6 June 1995 | 6 September 1995 |
| Equatorial Guinea | 25 September 1987[a] | 25 December 1987 |
| Estonia | 21 October 1991[a] | 21 January 1992 |
| Finland | 19 August 1975 | 23 March 1976 |
| France | 17 February 1984[a] | 17 May 1984 |
| Gambia | 9 June 1988[a] | 9 September 1988 |
| Georgia | 3 May 1994[a] | 3 August 1994 |
| Germany | 25 August 1993 | 25 November 1993 |
| Ghana | 7 September 2000 | 7 December 2000 |
| Greece | 5 May 1997[a] | 5 August 1997 |
| Guatemala | 28 November 2000 | 28 February 2001 |
| Guinea | 17 June 1993 | 17 September 1993 |
| Guyana[b] | 10 May 1993[a] | 10 August 1993 |
| Hungary | 7 September 1988[a] | 7 December 1988 |
| Iceland | 22 August 1979[a] | 22 November 1979 |
| Ireland | 8 December 1989 | 8 March 1990 |
| Italy | 15 September 1978 | 15 December 1978 |
| [Jamaica[f]] | | |
| Kyrgyzstan | 7 October 1994[a] | 7 January 1995 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Latvia | 22 June 1994[a] | 22 September 1994 |
| Lesotho | 6 September 2000 | 6 December 2000 |
| Libyan Arab Jamahiriya | 16 May 1989[a] | 16 August 1989 |
| Liechtenstein | 10 December 1998[a] | 10 March 1999 |
| Lithuania | 20 November 1991[a] | 20 February 1992 |
| Luxembourg | 18 August 1983[a] | 18 November 1983 |
| Madagascar | 21 June 1971 | 23 March 1976 |
| Malawi | 11 June 1996 | 11 September 1996 |
| Malta | 13 September 1990[a] | 13 December 1990 |
| Mauritius | 12 December 1973[a] | 23 March 1976 |
| Mongolia | 16 April 1991[a] | 16 July 1991 |
| Namibia | 28 November 1994[a] | 28 February 1995 |
| Nepal | 14 May 1991[a] | 14 August 1991 |
| Netherlands | 11 December 1978 | 11 March 1979 |
| New Zealand | 26 May 1989[a] | 26 August 1989 |
| Nicaragua | 12 March 1980[a] | 12 June 1980 |
| Niger | 7 March 1986[a] | 7 June 1986 |
| Norway | 13 September 1972 | 23 March 1976 |
| Panama | 8 March 1977 | 8 June 1977 |
| Paraguay | 10 January 1995[a] | 10 April 1995 |
| Peru | 3 October 1980 | 3 January 1981 |
| Philippines | 22 August 1989[a] | 22 November 1989 |
| Poland | 7 November 1991[a] | 7 February 1992 |
| Portugal | 3 May 1983 | 3 August 1983 |
| Republic of Korea | 10 April 1990[a] | 10 July 1990 |
| Romania | 20 July 1993[a] | 20 October 1993 |
| Russian Federation | 1 October 1991[a] | 1 January 1992 |
| Saint Vincent and the Grenadines | 9 November 1981[a] | 9 February 1982 |
| San Marino | 18 October 1985[a] | 18 January 1986 |
| Senegal | 13 February 1978 | 13 May 1978 |
| Seychelles | 5 May 1992[a] | 5 August 1992 |
| Sierra Leone | 23 August 1996[a] | 23 November 1996 |
| Slovakia | 28 May 1993[c] | 1 January 1993 |
| Slovenia | 16 July 1993[a] | 16 October 1993 |
| Somalia | 24 January 1990[a] | 24 April 1990 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Spain | 25 January 1985[a] | 25 April 1985 |
| Sri Lanka[a] | 3 October 1997 | 3 January 1998 |
| Suriname | 28 December 1976[a] | 28 March 1977 |
| Sweden | 6 December 1971 | 23 March 1976 |
| Tajikistan | 4 January 1999[a] | 4 April 1999 |
| The former Yugoslav Republic of Macedonia | 12 December 1994[a] | 12 March 1995 |
| Togo | 30 March 1988[a] | 30 June 1988 |
| [Trinidad and Tobago[b]] | 14 November 1980[a] | 14 February 1981 |
| Turkmenistan[b] | 1 May 1997[a] | 1 August 1997 |
| Uganda | 14 November 1995 | 14 February 1996 |
| Ukraine | 25 July 1991[a] | 25 October 1991 |
| Uruguay | 1 April 1970 | 23 March 1976 |
| Uzbekistan | 28 September 1995 | 28 December 1995 |
| Venezuela | 10 May 1978 | 10 August 1978 |
| Zambia | 10 April 1984[a] | 10 July 1984 |

### C. States parties to the Second Optional Protocol, aiming at the abolition of the death penalty (45)

| | | |
|---|---|---|
| Australia | 2 October 1990[a] | 11 July 1991 |
| Austria | 2 March 1993 | 2 June 1993 |
| Azerbaijan | 22 January 1999[a] | 22 April 1999 |
| Belgium | 8 December 1998 | 8 March 1999 |
| Bosnia and Herzegovina | 16 March 2001 | 16 June 2001 |
| Bulgaria | 10 August 1999 | 10 November 1999 |
| Cape Verde | 19 May 2000[a] | 19 August 2000 |
| Colombia | 5 August 1997 | 5 November 1997 |
| Costa Rica | 5 June 1998 | 5 September 1998 |
| Croatia | 12 October 1995[a] | 12 January 1996 |
| Cyprus | 10 September 1999 | 10 December 1999 |
| Denmark | 24 February 1994 | 24 May 1994 |
| Ecuador | 23 February 1993[a] | 23 May 1993 |
| Finland | 4 April 1991 | 11 July 1991 |
| Georgia | 22 March 1999[a] | 22 June 1999 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Germany | 18 August 1992 | 18 November 1992 |
| Greece | 5 May 1997[a] | 5 August 1997 |
| Hungary | 24 February 1994[a] | 24 May 1994 |
| Iceland | 2 April 1991 | 11 July 1991 |
| Ireland | 18 June 1993[a] | 18 September 1993 |
| Italy | 14 February 1995 | 14 May 1995 |
| Liechtenstein | 10 December 1998 | 10 March 1999 |
| Luxembourg | 12 February 1992 | 12 May 1992 |
| Malta | 29 December 1994 | 29 March 1995 |
| Monaco | 28 March 2000[a] | 28 June 2000 |
| Mozambique | 21 July 1993[a] | 21 October 1993 |
| Namibia | 28 November 1994[a] | 28 February 1995 |
| Nepal | 4 March 1998 | 4 June 1998 |
| Netherlands | 26 March 1991 | 11 July 1991 |
| New Zealand | 22 February 1990 | 11 July 1991 |
| Norway | 5 September 1991 | 5 December 1991 |
| Panama | 21 January 1993[a] | 21 April 1993 |
| Portugal | 17 October 1990 | 11 July 1991 |
| Romania | 27 February 1991 | 11 July 1991 |
| Seychelles | 15 December 1994[a] | 15 March 1995 |
| Slovakia | 22 June 1999[a] | 22 September 1999 |
| Slovenia | 10 March 1994 | 10 June 1994 |
| Spain | 11 April 1991 | 11 July 1991 |
| Sweden | 11 May 1990 | 11 July 1991 |
| Switzerland | 16 June 1994[a] | 16 September 1994 |
| The former Yugoslav Republic of Macedonia | 26 January 1995[a] | 26 April 1995 |
| United Kingdom of Great Britain and Northern Ireland | 10 December 1999 | 10 March 2000 |
| Turkmenistan | 12 January 2000[a] | 12 April 2000 |
| Uruguay | 21 January 1993 | 21 April 1993 |
| Venezuela | 22 February 1993 | 22 May 1993 |

## D. States which have made the declaration under article 41 of the Covenant (47)

| State party | Valid from | Valid until |
|---|---|---|
| Algeria | 12 September 1989 | Indefinitely |
| Argentina | 8 August 1986 | Indefinitely |
| Australia | 28 January 1993 | Indefinitely |
| Austria | 10 September 1978 | Indefinitely |
| Belarus | 30 September 1992 | Indefinitely |
| Belgium | 5 March 1987 | Indefinitely |
| Bosnia and Herzegovina | 6 March 1992 | Indefinitely |
| Bulgaria | 12 May 1993 | Indefinitely |
| Canada | 29 October 1979 | Indefinitely |
| Chile | 11 March 1990 | Indefinitely |
| Congo | 7 July 1989 | Indefinitely |
| Croatia | 12 October 1995 | Indefinitely |
| Czech Republic | 1 January 1993 | Indefinitely |
| Denmark | 23 March 1976 | Indefinitely |
| Ecuador | 24 August 1984 | Indefinitely |
| Finland | 19 August 1975 | Indefinitely |
| Gambia | 9 June 1988 | Indefinitely |
| Germany | 28 March 1976 | 10 May 2001[j] |
| Guyana | 10 May 1993 | Indefinitely |
| Hungary | 7 September 1988 | Indefinitely |
| Iceland | 22 August 1979 | Indefinitely |
| Ireland | 8 December 1989 | Indefinitely |
| Italy | 15 September 1978 | Indefinitely |
| Liechtenstein | 10 March 1999 | Indefinitely |
| Luxembourg | 18 August 1983 | Indefinitely |
| Malta | 13 September 1990 | Indefinitely |
| Netherlands | 11 December 1978 | Indefinitely |
| New Zealand | 28 December 1978 | Indefinitely |
| Norway | 23 March 1976 | Indefinitely |
| Peru | 9 April 1984 | Indefinitely |
| Philippines | 23 October 1986 | Indefinitely |
| Poland | 25 September 1990 | Indefinitely |
| Republic of Korea | 10 April 1990 | Indefinitely |
| Russian Federation | 1 October 1991 | Indefinitely |
| Senegal | 5 January 1981 | Indefinitely |

| State party | Valid from | Valid until |
|---|---|---|
| Slovakia | 1 January 1993 | Indefinitely |
| Slovenia | 6 July 1992 | Indefinitely |
| South Africa | 10 March 1999 | Indefinitely |
| Spain | 30 January 1998 | Indefinitely |
| Sri Lanka | 11 June 1980 | Indefinitely |
| Sweden | 23 March 1976 | Indefinitely |
| Switzerland | 18 September 1992 | 18 September 2002 |
| Tunisia | 24 June 1993 | Indefinitely |
| Ukraine | 28 July 1992 | Indefinitely |
| United Kingdom of Great Britain and Northern Ireland | 20 May 1976 | Indefinitely |
| United States of America | 8 September 1992 | Indefinitely |
| Zimbabwe | 20 August 1991 | Indefinitely |

**Notes**

[a] Accession.

[b] In the opinion of the Committee, the entry into force goes back to the date when the State became independent.

[c] Succession.

[d] Although a declaration of succession has not been received, the people within the territory of the State - which constituted part of a former State party to the Covenant - continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40), vol. I, paras. 48 and 49).

[e] For information on the application of the Covenant in Hong Kong, Special Administrative Region, People's Republic of China, see Official Records of the General Assembly, Fifty-first Session, Supplement No. 40 (A/51/40), chap. V, sect. B, paras. 78-85. For information on the application of the Covenant in Macao, Special Administrative Region, see A/55/40, chapter IV.

[f] Jamaica denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998.

[g] Trinidad and Tobago denounced the Optional Protocol on 26 May 1998 and reacceded on the same day subject to reservations, with effect from 26 August 1998. Trinidad and Tobago's reservation elicited objections from numerous States parties to the Optional Protocol. Following the Committee's decision in case No. 845/1999 (Kennedy v. Trinidad and Tobago) of 2 November 1999, declaring the reservation invalid, Trinidad and Tobago again denounced the Optional Protocol on 27 March 2000, with effect from 27 June 2000. Cases pending against Jamaica and Trinidad and Tobago are still under examination before the Committee.

[h] Guyana denounced the Optional Protocol on 5 January 1999 and reacceded on the same day subject to reservations, with effect from 5 April 1999. Guyana's reservation elicited objections from six States parties to the Optional Protocol.

[i] The Federal Republic of Yugoslavia was admitted to the United Nations by General Assembly resolution 55/12 of 1 November 2000. According to a subsequent declaration made by the Government of the State party, the Federal Republic of Yugoslavia acceded to the Covenant with effect from 23 March 2001.

[j] No further declaration has been made under article 41 of the Covenant since 10 May 2001.

## Annex II

## MEMBERSHIP AND OFFICERS OF THE HUMAN RIGHTS COMMITTEE, 2000-2001

### A. Membership of the Human Rights Committee

#### 1. Seventieth session (October-November 2000)

| | |
|---|---|
| Mr. Abdelfattah AMOR** | Tunisia |
| Mr. Nisuke ANDO** | Japan |
| Mr. Prafullachandra Natwarlal BHAGWATI** | India |
| Ms. Christine CHANET** | France |
| Viscount Colville of Culross* | United Kingdom of Great Britain and Northern Ireland |
| Ms. Elizabeth EVATT* | Australia |
| Ms. Pilar GAITAN DE POMBO* | Colombia |
| Mr. Louis HENKIN** | United States of America |
| Mr. Eckart KLEIN** | Germany |
| Mr. David KRETZMER** | Israel |
| Mr. Rajsoomer LALLAH* | Mauritius |
| Ms. Cecilia MEDINA QUIROGA** | Chile |
| Mr. Fausto POCAR* | Italy |
| Mr. Martin SCHEININ* | Finland |
| Mr. Hipólito SOLARI-YRIGOYEN** | Argentina |
| Mr. Roman WIERUSZEWSKI* | Poland |
| Mr. Maxwell YALDEN* | Canada |
| Mr. Abdallah ZAKHIA* | Lebanon |

---

* Term expired on 31 December 2000.

** Term expires on 31 December 2002.

**2. Seventy-first and seventy-second sessions (March/April and July 2001)**

| | |
|---|---|
| Mr. Abdelfattah AMOR* | Tunisia |
| Mr. Nisuke ANDO* | Japan |
| Mr. Prafullachandra Natwarlal BHAGWATI** | India |
| Ms. Christine CHANET* | France |
| Mr. Maurice GLÈLÈ AHANHANZO** | Benin |
| Mr. Louis HENKIN* | United States of America |
| Mr. Ahmed Tawfik KHALIL** | Egypt |
| Mr. Eckart KLEIN* | Germany |
| Mr. David KRETZMER* | Israel |
| Mr. Rajsoomer LALLAH** | Mauritius |
| Ms. Cecilia MEDINA QUIROGA* | Chile |
| Mr. Rafael RIVAS POSADA** | Colombia |
| Sir Nigel RODLEY** | United Kingdom of Great Britain and Northern Ireland |
| Mr. Martin SCHEININ** | Finland |
| Mr. Ivan SHEARER** | Australia |
| Mr. Hipólito SOLARI-YRIGOYEN* | Argentina |
| Mr. Patrick VELLA** | Malta |
| Mr. Maxwell YALDEN** | Canada |

---

* Term expires on 31 December 2002.

** Term expires on 31 December 2004.

## B. Officers

### 1. During the seventieth session

The officers of the Committee, elected for a term of two years at the 1729th meeting, on 23 March 1999 (sixty-fifth session) were as follows:

| | |
|---|---|
| Chairperson: | Ms. Cecilia Medina Quiroga |
| Vice-Chairpersons: | Ms. Elizabeth Evatt<br>Mr. Abdelfattah Amor<br>Mr. Prafullachandra Natwarlal Bhagwati |
| Rapporteur: | Viscount Colville of Culross |

### 2. During the seventy-first and seventy-second sessions

The officers of the Committee, elected for a term of two years at the 1897th meeting, on 19 March 2001 (seventy-first session), were as follows:

| | |
|---|---|
| Chairperson: | Mr. Prafullachandra Natwarlal Bhagwati |
| Vice-Chairpersons: | Mr. Abdelfattah Amor<br>Mr. David Kretzmer<br>Mr. Hipólito Solari-Yrigoyen |
| Rapporteur: | Mr. Eckart Klein |

## Annex III

# A. CONSOLIDATED GUIDELINES FOR STATE REPORTS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**(as amended at the seventieth session, October-November 2000 (CCPR/C/GUI/Rev.2))***

## A. Introduction

**A.1** These guidelines replace all earlier versions issued by the Human Rights Committee, which may now be disregarded (CCPR/C/19/Rev.1 of 26 August 1982, CCPR/C/5/Rev.2 of 28 April 1995 and Annex VIII to the Committee's 1998 report to the General Assembly (A/53/40)); the Committee's general comment 2 (13) of 1981 is also superseded. The present guidelines do not affect the Committee's procedure in relation to any special reports which may be requested.

**A.2** These guidelines will be effective for all reports to be presented after 31 December 1999.

**A.3** The guidelines should be followed by States parties in the preparation of initial and all subsequent periodic reports.

**A.4** Compliance with these guidelines will reduce the need for the Committee to request further information when it proceeds to consider a report; it will also help the Committee to consider the situation regarding human rights in every State party on an equal basis.

## B. Framework of the Covenant concerning reports

**B.1** Every State party, upon ratifying the Covenant, undertakes, under article 40, to submit, within a year of the Covenant's entry into force for that State, an initial report on the measures it has adopted which give effect to the rights recognized in the Covenant ("Covenant rights") and progress made in their enjoyment; and thereafter periodic reports whenever the Committee so requests.

**B.2** For subsequent periodic reports the Committee has adopted a practice of stating, at the end of its concluding observations, a date by which the following periodic report should be submitted.

---

* Adopted during the sixty-sixth session (July 1999) of the Human Rights Committee and amended during its seventieth session (October 2000).

## C. General guidance for contents of all reports

C.1 The articles and the Committee's general comments. The terms of the articles in Parts I, II and III of the Covenant must, together with general comments issued by the Committee on any such article, be taken into account in preparing the report.

C.2 Reservations and declarations. Any reservation to or declaration as to any article of the Covenant by the State party should be explained and its continued maintenance justified.

C.3 Derogations. The date, extent and effect of, and procedures for imposing and for lifting any derogation under article 4 should be fully explained in relation to every article of the Covenant affected by the derogation.

C.4 Factors and difficulties. Article 40 of the Covenant requires that factors and difficulties, if any, affecting the implementation of the Covenant should be indicated. A report should explain the nature and extent of, and reasons for every such factor and difficulty, if any such exist; and should give details of the steps being taken to overcome these.

C.5 Restrictions or limitations. Certain articles of the Covenant permit some defined restrictions or limitations on rights. Where these exist, their nature and extent should be set out.

C.6 Data and statistics. A report should include sufficient data and statistics to enable the Committee to assess progress in the enjoyment of Covenant rights, relevant to any appropriate article.

C.7 Article 3. The situation regarding the equal enjoyment of Covenant rights by men and women should be specifically addressed.

C.8 Core document. Where the State party has already prepared a core document (see HRI/CORE/1, dated 24 February 1992), this will be available to the Committee: it should be updated as necessary in the report, particularly as regards "General legal framework" and "Information and publicity" (see HRI/CORE/1, paras. 3 and 4).

## D. The initial report

### D.1 General

This report is the State party's first opportunity to present to the Committee the extent to which its laws and practices comply with the Covenant which it has ratified. The report should:

Establish the constitutional and legal framework for the implementation of Covenant rights;

Explain the legal and practical measures adopted to give effect to Covenant rights;

Demonstrate the progress made in ensuring enjoyment of Covenant rights by the people within the State party and subject to its jurisdiction.

### D.2 Contents of the report

**D.2.1** A State party should deal specifically with every article in Parts I, II and III of the Covenant; legal norms should be described, but that is not sufficient: the factual situation and the practical availability, effect and implementation of remedies for violation of Covenant rights should be explained and exemplified.

**D.2.2** The report should explain:

How article 2 of the Covenant is applied, setting out the principal legal measures which the State party has taken to give effect to Covenant rights; and the range of remedies available to persons whose rights may have been violated;

Whether the Covenant is incorporated into domestic law in such a manner as to be directly applicable;

If not, whether its provisions can be invoked before and given effect to by courts, tribunals and administrative authorities;

Whether the Covenant rights are guaranteed in a Constitution or other laws and to what extent; or

Whether Covenant rights must be enacted or reflected in domestic law by legislation so as to be enforceable.

**D.2.3** Information should be given about the judicial, administrative and other competent authorities having jurisdiction to secure Covenant rights.

**D.2.4** The report should include information about any national or official institution or machinery which exercises responsibility in implementing Covenant rights or in responding to complaints of violations of such rights, and give examples of their activities in this respect.

### D.3 Annexes to the report

**D.3.1** The report should be accompanied by copies of the relevant principal constitutional, legislative and other texts which guarantee and provide remedies in relation to Covenant rights. Such texts will not be copied or translated, but will be available to members of the Committee; it is important that the report itself contains sufficient quotations from or summaries of these texts so as to ensure that the report is clear and comprehensible without reference to the annexes.

## E. Subsequent periodic reports

**E.1** There should be two starting points for such reports:

The concluding observations (particularly "Concerns" and "Recommendations" on the previous report and summary records of the Committee's consideration (insofar as these exist);

An examination by the State party of the progress made towards and the current situation concerning the enjoyment of Covenant rights by persons within its territory or jurisdiction.

E.2 Periodic reports should be structured so as to follow the articles of the Covenant. If there is nothing new to report under any article it should be so stated.[a]

E.3 The State party should refer again to the guidance on initial reports and on annexes, insofar as these may also apply to a periodic report.

E.4 There may be circumstances where the following matters should be addressed, so as to elaborate a periodic report:

There may have occurred a fundamental change in the State party's political and legal approach affecting Covenant rights: in such a case a full article by article report may be required;

New legal or administrative measures may have been introduced which deserve the annexure of texts and judicial or other decisions.

## F. Optional protocols

F.1 If the State party has ratified the Optional Protocol and the Committee has issued Views entailing provision of a remedy or expressing any other concern, relating to a communication received under that Protocol, a report should (unless the matter has been dealt with in a previous report) include information about the steps taken to provide a remedy, or meet such a concern, and to ensure that any circumstance thus criticized does not recur.

F.2 If the State party has abolished the death penalty the situation relating to the Second Optional Protocol should be explained.

## G. The Committee's consideration of reports

### G.1 General

The Committee intends its consideration of a report to take the form of a constructive discussion with the delegation, the aim of which is to improve the situation pertaining to Covenant rights in the State.

### G.2 List of issues

On the basis of all information at its disposal, the Committee will supply in advance a list of issues which will form the basic agenda for consideration of the report. The delegation should come prepared to address the list of issues and to respond to further questions from members, with such updated information as may be necessary; and to do so within the time allocated for consideration of the report.

### G.3 The State party's delegation

The Committee wishes to ensure that it is able effectively to perform its functions under article 40 and that the reporting State party should obtain the maximum benefit from the reporting requirement. The State party's delegation should, therefore, include persons who, through their knowledge of and competence to explain the human rights situation in that State, are able to respond to the Committee's written and oral questions and comments concerning the whole range of Covenant rights.

### G.4 Concluding observations

Shortly after the consideration of the report, the Committee will publish its concluding observations on the report and the ensuing discussion with the delegation. These concluding observations will be included in the Committee's annual report to the General Assembly; the Committee expects the State party to disseminate these conclusions, in all appropriate languages, with a view to public information and discussion.

### G.5 Extra information

G.5.1 Following the submission of any report, subsequent revisions or updating may only be submitted:

(a) No later than 10 weeks prior to the date set for the Committee's consideration of the report (the minimum time required by the United Nations translation services); or,

(b) After that date, provided that the text has been translated by the State party into the working languages of the Committee (currently English, Spanish and French).

If one or other of these courses is not complied with, the Committee will not be able to take an addendum into account. This, however, does not apply to updated annexes or statistics.

G.5.2 In the course of the consideration of a report, the Committee may request or the delegation may offer further information; the secretariat will keep a note of such matters which should be dealt with in the next report.

G.6.1 The Committee may, in a case where there has been a long-term failure by a State party, despite reminders, to submit an initial or a periodic report, announce its intention to examine the extent of compliance with Covenant rights in that State party at a specified future session. Prior to that session it will transmit to the State party appropriate material in its possession. The State party may send a delegation to the specified session, which may contribute to the Committee's discussion, but in any event the Committee may issue provisional concluding observations and set a date for the submission by the State party of a report of a nature to be specified.

G.6.2 In a case where a State party, having submitted a report which has been scheduled at a session for examination, informs the Committee, at a time when it is impossible to schedule the examination of another State party report, that its delegation will not attend the session, the Committee may examine the report on the basis of the list of issues either at that session or at

another to be specified. In the absence of a delegation, it may decide either to reach provisional concluding observations, or to consider the report and other material and follow the course in paragraph G.4 above.[b]

## H. Format of the report

The distribution of a report, and thus its availability for consideration by the Committee, will be greatly facilitated if:

(a) The paragraphs are sequentially numbered;

(b) The document is written on A4-sized paper;

(c) Is single-spaced; and

(d) Allows reproduction by photo-offset (is on one side only of each sheet of paper).

## B. REVISED RULES OF PROCEDURE OF THE COMMITTEE

**(as formally amended at the seventy-first session of the Committee (CCPR/C/3/Rev.6 and Corr.1))**

### PART I. GENERAL RULES

### I. SESSIONS

#### Rule 1

The Human Rights Committee (hereinafter referred to as "the Committee") shall hold sessions as may be required for the satisfactory performance of its functions in accordance with the International Covenant on Civil and Political Rights (hereinafter referred to as "the Covenant").

#### Rule 2

1. The Committee shall normally hold three regular sessions each year.

2. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General of the United Nations (hereinafter referred to as "the Secretary-General"), taking into account the calendar of conferences as approved by the General Assembly.

#### Rule 3

1. Special sessions of the Committee shall be convened by decision of the Committee. When the Committee is not in session, the Chairperson may convene special sessions in consultation with the other officers of the Committee. The Chairperson of the Committee shall also convene special sessions:

(a) At the request of a majority of the members of the Committee;

(b) At the request of a State party to the Covenant.

2. Special sessions shall be convened as soon as possible at a date fixed by the Chairperson in consultation with the Secretary-General and with the other officers of the Committee, taking into account the calendar of conferences as approved by the General Assembly.

#### Rule 4

The Secretary-General shall notify the members of the Committee of the date and place of the first meeting of each session. Such notification shall be sent, in the case of a regular session, at least six weeks in advance and, in the case of a special session, at least 18 days in advance.

**Rule 5**

Sessions of the Committee shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. Another place for a session may be designated by the Committee in consultation with the Secretary-General.

## II. AGENDA

**Rule 6**

The provisional agenda for each regular session shall be prepared by the Secretary-General in consultation with the Chairperson of the Committee, in conformity with the relevant provisions of the Covenant and of the Optional Protocol to the International Covenant on Civil and Political Rights (hereinafter referred to as "the Protocol"), and shall include:

(a) Any item the inclusion of which has been ordered by the Committee at a previous session;

(b) Any item proposed by the Chairperson of the Committee;

(c) Any item proposed by a State party to the Covenant;

(d) Any item proposed by a member of the Committee;

(e) Any item proposed by the Secretary-General relating to functions of the Secretary-General under the Covenant, the Protocol or these rules.

**Rule 7**

The provisional agenda for a special session of the Committee shall consist only of those items which are proposed for consideration at that special session.

**Rule 8**

The first item on the provisional agenda for any session shall be the adoption of the agenda, except for the election of the officers when required under rule 17 of these rules.

**Rule 9**

During a session, the Committee may revise the agenda and may, as appropriate, defer or delete items; only urgent and important items may be added to the agenda.

**Rule 10**

The provisional agenda and the basic documents relating to each item appearing thereon shall be transmitted to the members of the Committee by the Secretary-General, who shall endeavour to have the documents transmitted to the members at least six weeks prior to the opening of the session.

## III. MEMBERS OF THE COMMITTEE

**Rule 11**

The members of the Committee shall be the 18 persons elected in accordance with articles 28 to 34 of the Covenant.

**Rule 12**

The term of office of the members of the Committee elected at the first election shall begin on 1 January 1977. The term of office of members of the Committee elected at subsequent elections shall begin on the day after the date of expiry of the term of office of the members of the Committee whom they replace.

**Rule 13**

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out the functions of the member for any cause other than absence of a temporary character, the Chairperson of the Committee shall notify the Secretary-General, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairperson shall immediately notify the Secretary-General, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect. The resignation of a member of the Committee shall be notified by that member in writing directly to the Chairperson or to the Secretary-General and action shall be taken to declare the seat of that member vacant only after such notification has been received.

**Rule 14**

A vacancy declared in accordance with rule 13 of these rules shall be dealt with in accordance with article 34 of the Covenant.

**Rule 15**

Any member of the Committee elected to fill a vacancy declared in accordance with article 33 of the Covenant shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

**Rule 16**

Before assuming duties as a member, each member of the Committee shall give the following solemn undertaking in open Committee:

"I solemnly undertake to discharge my duties as a member of the Human Rights Committee impartially and conscientiously."

## IV. OFFICERS

**Rule 17**

The Committee shall elect from among its members a Chairperson, three Vice-Chairpersons and a Rapporteur.

**Rule 18**

The officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office after ceasing to be a member of the Committee.

**Rule 19**

The Chairperson shall perform the functions conferred upon the Chairperson by the Covenant, the rules of procedure and the decisions of the Committee. In the exercise of those functions, the Chairperson shall remain under the authority of the Committee.

**Rule 20**

If during a session the Chairperson is unable to be present at a meeting or any part thereof, the Chairperson shall designate one of the Vice-Chairpersons to act as Chairperson.

**Rule 21**

A Vice-Chairperson acting as Chairperson shall have the same rights and duties as the Chairperson.

**Rule 22**

If any of the officers of the Committee ceases to serve or declares to be unable to continue serving as a member of the Committee or for any reason is no longer able to act as an officer, a new officer shall be elected for the unexpired term of the predecessor.

## V. SECRETARIAT

### Rule 23

1. The secretariat of the Committee and of such subsidiary bodies as may be established by the Committee (hereinafter referred to as "the Secretariat") shall be provided by the Secretary-General.

2. The Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Covenant.

### Rule 24

The Secretary-General or representative of the Secretary-General shall attend all meetings of the Committee. Subject to rule 38 of these rules, the Secretary-General or the representative may make oral or written statements at meetings of the Committee or its subsidiary bodies.

### Rule 25

The Secretary-General shall be responsible for all the necessary arrangements for meetings of the Committee and its subsidiary bodies.

### Rule 26

The Secretary-General shall be responsible for informing the members of the Committee without delay of any questions which may be brought before it for consideration.

### Rule 27

Before any proposal which involves expenditure is approved by the Committee or by any of its subsidiary bodies, the Secretary-General shall prepare and circulate to the members of the Committee or subsidiary body, as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chairperson to draw the attention of members to this estimate and to invite discussion on it when the proposal is considered by the Committee or subsidiary body.

## VI. LANGUAGES

Arabic, Chinese, English, French, Russian and Spanish shall be the official languages, and Arabic, English, French, Russian and Spanish the working languages of the Committee.

### Rule 29

Speeches made in any of the working languages shall be interpreted into the other working languages. Speeches made in an official language shall be interpreted into the working languages.

**Rule 30**

Any speaker addressing the Committee and using a language other than one of the official languages shall normally provide for interpretation into one of the working languages. Interpretation into the other working languages by interpreters of the Secretariat may be based on the interpretation given in the first working language.

**Rule 31**

Summary records of the meetings of the Committee shall be drawn up in the working languages.

**Rule 32**

All formal decisions of the Committee shall be made available in the official languages. All other official documents of the Committee shall be issued in the working languages and any of them may, if the Committee so decides, be issued in all the official languages.

## VII. PUBLIC AND PRIVATE MEETINGS

**Rule 33**

The meetings of the Committee and its subsidiary bodies shall be held in public unless the Committee decides otherwise or it appears from the relevant provisions of the Covenant or the Protocol that the meeting should be held in private. The adoption of concluding observations under article 40 shall take place in closed meetings.

**Rule 34**

At the close of each private meeting the Committee or its subsidiary body may issue a communiqué through the Secretary-General.

## VIII. RECORDS

**Rule 35**

Summary records of the public and private meetings of the Committee and its subsidiary bodies shall be prepared by the Secretariat. They shall be distributed in provisional form as soon as possible to the members of the Committee and to any others participating in the meeting. All such participants may, within three working days after receipt of the provisional record of the meeting, submit corrections to the Secretariat. Any disagreement concerning such corrections shall be settled by the Chairperson of the Committee or the Chairperson of the subsidiary body to which the record relates or, in the case of continued disagreement, by decision of the Committee or of the subsidiary body.

**Rule 36**

1. The summary records of public meetings of the Committee in their final form shall be documents of general distribution unless, in exceptional circumstances, the Committee decides otherwise.

2. The summary records of private meetings shall be distributed to the members of the Committee and to other participants in the meetings. They may be made available to others upon decision of the Committee at such time and under such circumstances as the Committee may decide.

## IX. CONDUCT OF BUSINESS

**Rule 37**

Twelve members of the Committee shall constitute a quorum.

**Rule 38**

The Chairperson shall declare the opening and closing of each meeting of the Committee, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The Chairperson, subject to these rules, shall have control over the proceedings of the Committee and over the maintenance of order at its meetings. The Chairperson may, in the course of the discussion of an item, propose to the Committee the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. The Chairperson shall rule on points of order and shall have the power to propose adjournment or closure of the debate or adjournment or suspension of a meeting. Debate shall be confined to the question before the Committee, and the Chairperson may call a speaker to order if that speaker's remarks are not relevant to the subject under discussion.

**Rule 39**

During the discussion of any matter, a member may at any time raise a point of order, and the point of order shall immediately be decided by the Chairperson in accordance with the rules of procedure. Any appeal against the ruling of the Chairperson shall immediately be put to the vote, and the ruling of the Chairperson shall stand unless overruled by a majority of the members present. A member may not, in raising a point of order, speak on the substance of the matter under discussion.

**Rule 40**

During the discussion of any matter, a member may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one member may speak in favour of and one against the motion, after which the motion shall immediately be put to the vote.

**Rule 41**

The Committee may limit the time allowed to each speaker on any question. When debate is limited and a speaker exceeds his allotted time, the Chairperson shall call that speaker to order without delay.

**Rule 42**

When the debate on an item is concluded because there are no other speakers, the Chairperson shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.

**Rule 43**

A member may at any time move the closure of the debate on the item under discussion, whether or not any other member or representative has signified a wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall immediately be put to the vote.

**Rule 44**

During the discussion of any matter, a member may move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall immediately be put to the vote.

**Rule 45**

Subject to rule 39 of these rules, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(a) To suspend the meeting;

(b) To adjourn the meeting;

(c) To adjourn the debate on the item under discussion;

(d) For the closure of the debate on the item under discussion.

**Rule 46**

Unless otherwise decided by the Committee, proposals and substantive amendments or motions submitted by members shall be introduced in writing and handed to the Secretariat, and their consideration shall, if so requested by any member, be deferred until the next meeting on the following day.

**Rule 47**

Subject to rule 45 of these rules, any motion by a member calling for a decision on the competence of the Committee to adopt a proposal submitted to it shall be put to the vote immediately before a vote is taken on the proposal in question.

**Rule 48**

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by another member.

**Rule 49**

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Committee so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers in favour of the motion and two speakers opposing the motion, after which it shall immediately be put to the vote.

## X. VOTING

**Rule 50**

Each member of the Committee shall have one vote.

**Rule 51***

Except as otherwise provided in the Covenant or elsewhere in these rules, decisions of the Committee shall be made by a majority of the members present.

---

* The Committee decided, at its first session, that in a footnote to rule 51 of the provisional rules of procedure attention should be drawn to the following:

1. The members of the Committee generally expressed the view that its method of work normally should allow for attempts to reach decisions by consensus before voting, provided that the Covenant and the rules of procedure were observed and that such attempts did not unduly delay the work of the Committee.

2. Bearing in mind paragraph 1 above, the Chairperson at any meeting may, and at the request of any member shall, put the proposal to a vote.

**Rule 52**

Subject to rule 58 of these rules, the Committee shall normally vote by show of hands, except that any member may request a roll-call, which shall then be taken in the alphabetical order of the names of the members of the Committee, beginning with the member whose name is drawn by lot by the Chairperson.

**Rule 53**

The vote of each member participating in a roll-call shall be inserted in the record.

**Rule 54**

After the voting has commenced, it shall not be interrupted unless a member raises a point of order in connection with the actual conduct of the voting. Brief statements by members consisting solely of explanations of their votes may be permitted by the Chairperson before the voting has commenced or after the voting has been completed.

**Rule 55**

Parts of a proposal shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

**Rule 56**

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

2. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

**Rule 57**

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

2. The Committee may, after each vote on a proposal, decide whether to vote on the next proposal.

3. Any motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before them.

**Rule 58**

Elections shall be held by secret ballot, unless the Committee decides otherwise in the case of an election to fill a place for which there is only one candidate.

**Rule 59**

1. When only one person or member is to be elected and no candidate obtains the required majority in the first ballot, a second ballot shall be taken, which shall be restricted to the two candidates who obtained the greatest number of votes.

2. If the second ballot is inconclusive and a majority vote of members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the greatest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a person or member is elected.

3. If the second ballot is inconclusive and a two-thirds majority is required, the balloting shall be continued until one candidate secures the necessary two-thirds majority. In the next three ballots, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third such unrestricted ballot, and the following three ballots shall be unrestricted, and so on until a person or member is elected.

**Rule 60**

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining the required majority in the first ballot shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

**Rule 61**

If a vote is equally divided on a matter other than an election, the proposal shall be regarded as rejected.

## XI. SUBSIDIARY BODIES

### Rule 62

1. The Committee may, taking into account the provisions of the Covenant and the Protocol, set up such subcommittees and other ad hoc subsidiary bodies as it deems necessary for the performance of its functions, and define their composition and powers.

2. Subject to the provisions of the Covenant and the Protocol and unless the Committee decides otherwise, each subsidiary body shall elect its own officers and may adopt its own rules of procedure. Failing such rules, the present rules of procedure shall apply mutatis mutandis.

## XII. ANNUAL REPORT OF THE COMMITTEE

### Rule 63

As prescribed in article 45 of the Covenant, the Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities, including a summary of its activities under the Protocol as prescribed in article 6 thereof.

## XIII. DISTRIBUTION OF REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMITTEE

### Rule 64

1. Without prejudice to the provisions of rule 36 of these rules of procedure and subject to paragraphs 2 and 3 of the present rule, reports, formal decisions and all other official documents of the Committee and its subsidiary bodies shall be documents of general distribution unless the Committee decides otherwise.

2. All reports, formal decisions and other official documents of the Committee and its subsidiary bodies relating to articles 41 and 42 of the Covenant and to the Protocol shall be distributed by the Secretariat to all members of the Committee, to the States parties concerned and, as may be decided by the Committee, to members of its subsidiary bodies and to others concerned.

3. Reports and additional information submitted by States parties pursuant to article 40 of the Covenant shall be documents of general distribution. The same applies to other information provided by a State party unless the State party concerned requests otherwise.

## XIV. AMENDMENTS

### Rule 65

These rules of procedure may be amended by a decision of the Committee, without prejudice to the relevant provisions of the Covenant and the Protocol.

## PART II. RULES RELATING TO THE FUNCTIONS OF THE COMMITTEE

### XV. REPORTS FROM STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

#### Rule 66

1. The States parties to the Covenant shall submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the Covenant.

2. Requests for submission of a report under article 40, paragraph 1 (b), of the Covenant may be made in accordance with the periodicity decided by the Committee or at any other time the Committee may deem appropriate. In the case of an exceptional situation when the Committee is not in session, a request may be made through the Chairperson, acting in consultation with the members of the Committee.

3. Whenever the Committee requests States parties to submit reports under article 40, paragraph 1 (b), of the Covenant, it shall determine the dates by which such reports shall be submitted.

4. The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and content of the reports to be submitted under article 40 of the Covenant.

#### Rule 67

1. The Secretary-General may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports from States members of those agencies as may fall within their field of competence.

2. The Committee may invite the specialized agencies to which the Secretary-General has transmitted parts of the reports to submit comments on those parts within such time limits as it may specify.

#### Rule 68

1. The Committee shall, through the Secretary-General, notify the States parties as early as possible of the opening date, duration and place of the session at which their respective reports will be examined. Representatives of the States parties may be present at the meetings of the Committee when their reports are examined. The Committee may also inform a State party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to that representative by the Committee and make statements on reports already submitted by the State party concerned, and may also submit additional information from that State party.

2. If a State party has submitted a report but fails to send any representative, in accordance with rule 68.1, under article 40, paragraph 1, of the Covenant, to the session at which it has been notified that its report will be examined, the Committee may, at its discretion, take one of the following courses:

(a) Notify the State party through the Secretary-General that at a specified session it intends to examine the report in accordance with rule 68.2 and thereafter act in accordance with rule 70.3; or

(b) Proceed at the session originally specified to examine the report and thereafter make and submit to the State party its provisional concluding observations and determine the date on which the report shall be examined under rule 68 or the date on which a new periodic report shall be submitted under rule 66.

3. Where the Committee acts under this rule, it shall so state in the annual report submitted under article 45 of the Covenant; provided that, where it acts under paragraph 2 (b) above, the report shall not include the text of the provisional concluding observations.

**Rule 69**

1. At each session the Secretary-General shall notify the Committee of all cases of non-submission of reports or additional information requested under rules 66 and 70 of these rules. In such cases the Committee may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of the report or additional information.

2. If, after the reminder referred to in paragraph 1 of this rule, the State party does not submit the report or additional information required under rules 66 and 70 of these rules, the Committee shall so state in the annual report which it submits to the General Assembly of the United Nations through the Economic and Social Council.

**Rule 69 A**

1. In cases where the Committee has been notified under rule 69.1 of the failure of a State to submit under rule 66.3 any report, under article 40, paragraph 1 (a) or (b) of the Covenant, and has sent reminders to the State party, the Committee may, at its discretion, notify the State party through the Secretary-General that it intends, on a date or at a session specified in the notification, to examine in a private session the measures taken by the State party to give effect to the rights recognized in the Covenant, and to proceed by adopting provisional concluding observations which will be submitted to the State party.

2. Where the Committee acts under paragraph 1 of this rule, it shall transmit to the State party, well in advance of the date or session specified, information in its possession which it considers appropriate as to the matters to be examined.

3. Where the Committee acts under this rule, it shall proceed in accordance with rule 68.3 and may set a date when it proceeds to act under rule 68.1.

**Rule 70**

1. When considering a report submitted by a State party under article 40 of the Covenant, the Committee shall first satisfy itself that the report provides all the information required under rule 66 of these rules.

2. If a report of a State party to the Covenant, in the opinion of the Committee, does not contain sufficient information, the Committee may request that State to furnish the additional information which is required, indicating by what date the said information should be submitted.

3. On the basis of its examination of any report or information supplied by a State party, the Committee may make appropriate concluding observations which will be communicated to the State party, together with notification of the date by which the next report, under article 40, shall be submitted.

4. No member of the Committee shall participate in the examination of State reports or the discussion and adoption of concluding observations if they involve the State party in respect of which he or she was elected to the Committee.

5. The Committee may request the State party to give priority to such aspects of its concluding observations as it may specify.

**Rule 70 A**

Where the Committee has specified for priority, under rule 70, paragraph 5, certain aspects of its concluding observations on a State party's report, it shall establish a procedure to consider replies by the State party on those aspects and to decide what consequent action, including the date set for the next periodic report, may be appropriate.

**Rule 71**

The Committee shall communicate, through the Secretary-General, to States parties the General Comments which it has adopted under article 40, paragraph 4, of the Covenant.

## XVI. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLE 41 OF THE COVENANT

**Rule 72**

1. A communication under article 41 of the Covenant may be referred to the Committee by either State party concerned by notice given in accordance with paragraph 1 (b) of that article.

2. The notice referred to in paragraph 1 of this rule shall contain or be accompanied by information regarding:

(a) Steps taken to seek adjustment of the matter in accordance with article 41, paragraphs 1 (a) and (b), of the Covenant, including the text of the initial communication and of any subsequent written explanations or statements by the States parties concerned which are pertinent to the matter;

(b) Steps taken to exhaust domestic remedies;

(c) Any other procedure of international investigation or settlement resorted to by the States parties concerned.

**Rule 73**

The Secretary-General shall maintain a permanent register of all communications received by the Committee under article 41 of the Covenant.

**Rule 74**

The Secretary-General shall inform the members of the Committee without delay of any notice given under rule 72 of these rules and shall transmit to them as soon as possible copies of the notice and relevant information.

**Rule 75**

1. The Committee shall examine communications under article 41 of the Covenant at closed meetings.

2. The Committee may, after consultation with the States parties concerned, issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

**Rule 76**

A communication shall not be considered by the Committee unless:

(a) Both States parties concerned have made declarations under article 41, paragraph 1, of the Covenant which are applicable to the communication;

(b) The time limit prescribed in article 41, paragraph 1 (b), of the Covenant has expired;

(c) The Committee has ascertained that all available domestic remedies have been invoked and exhausted in the matter in conformity with the generally recognized principles of international law, or that the application of the remedies is unreasonably prolonged.

**Rule 77 A**

Subject to the provisions of rule 76 of these rules, the Committee shall proceed to make its good offices available to the States parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant.

**Rule 77 B**

The Committee may, through the Secretary-General, request the States parties concerned or either of them to submit additional information or observations orally or in writing. The Committee shall indicate a time limit for the submission of such written information or observations.

**Rule 77 C**

1. The States parties concerned shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

2. The Committee shall, through the Secretary-General, notify the States parties concerned as early as possible of the opening date, duration and place of the session at which the matter will be examined.

3. The procedure for making oral and/or written submissions shall be decided by the Committee, after consultation with the States parties concerned.

**Rule 77 D**

1. Within 12 months after the date on which the Committee received the notice referred to in rule 72 of these rules, the Committee shall adopt a report in accordance with article 41, paragraph 1 (h), of the Covenant.

2. The provisions of paragraph 1 of rule 77 C of these rules shall not apply to the deliberations of the Committee concerning the adoption of the report.

3. The Committee's report shall be communicated, through the Secretary-General, to the States parties concerned.

**Rule 77 E**

If a matter referred to the Committee in accordance with article 41 of the Covenant is not resolved to the satisfaction of the States parties concerned, the Committee may, with their prior consent, proceed to apply the procedure prescribed in article 42 of the Covenant.

## XVII. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER THE OPTIONAL PROTOCOL

### A. Transmission of communications to the Committee

#### Rule 78

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications which are or appear to be submitted for consideration by the Committee under article 1 of the Protocol.

2. The Secretary-General, when necessary, may request clarification from the author of a communication as to whether the author wishes to have the communication submitted to the Committee for consideration under the Protocol. In case there is still doubt as to the wish of the author, the Committee shall be seized of the communication.

3. No communication shall be received by the Committee or included in a list under rule 79 if it concerns a State which is not a party to the Protocol.

#### Rule 79

1. The Secretary-General shall prepare lists of the communications submitted to the Committee in accordance with rule 78 above, with a brief summary of their contents, and shall circulate such lists to the members of the Committee at regular intervals. The Secretary-General shall also maintain a permanent register of all such communications.

2. The full text of any communication brought to the attention of the Committee shall be made available to any member of the Committee upon request by that member.

#### Rule 80

1. The Secretary-General may request clarification from the author of a communication concerning the applicability of the Protocol to his communication, in particular regarding:

(a) The name, address, age and occupation of the author and the verification of the author's identity;

(b) The name of the State party against which the communication is directed;

(c) The object of the communication;

(d) The provision or provisions of the Covenant alleged to have been violated;

(e) The facts of the claim;

(f) Steps taken by the author to exhaust domestic remedies;

(g) The extent to which the same matter is being examined under another procedure of international investigation or settlement.

2. When requesting clarification or information, the Secretary-General shall indicate an appropriate time limit to the author of the communication with a view to avoiding undue delays in the procedure under the Protocol.

3. The Committee may approve a questionnaire for the purpose of requesting the above-mentioned information from the author of the communication.

4. The request for clarification referred to in paragraph 1 of the present rule shall not preclude the inclusion of the communication in the list provided for in rule 79, paragraph 1, of these rules.

**Rule 81**

For each registered communication the Secretary-General shall as soon as possible prepare and circulate to the members of the Committee a summary of the relevant information obtained.

**B. General provisions regarding the consideration of communications by the Committee or its subsidiary bodies**

**Rule 82**

Meetings of the Committee or its subsidiary bodies during which communications under the Protocol will be examined shall be closed. Meetings during which the Committee may consider general issues such as procedures for the application of the Protocol may be public if the Committee so decides.

**Rule 83**

The Committee may issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

**Rule 84**

1. A member shall not take part in the examination of a communication by the Committee:

(a) If the State party in respect of which he or she was elected to the Committee is a party to the case;

(b) If the member has any personal interest in the case; or

(c) If the member has participated in any capacity in the making of any decision on the case covered by the communication.

2. Any question which may arise under paragraph 1 above shall be decided by the Committee.

**Rule 85**

If, for any reason, a member considers that he or she should not take part or continue to take part in the examination of a communication, the member shall inform the Chairperson of his or her withdrawal.

**Rule 86**

The Committee may, prior to forwarding its views on the communication to the State party concerned, inform that State of its views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State party concerned that such expression of its views on interim measures does not imply a determination on the merits of the communication.

**C. Procedure to determine admissibility**

**Rule 87**

1. The Committee shall decide as soon as possible and in accordance with the following rules whether the communication is admissible or is inadmissible under the Protocol.

2. A working group established under rule 89, paragraph 1, may also declare a communication admissible when it is composed of five members and all the members so decide.

**Rule 88**

1. Communications shall be dealt with in the order in which they are received by the Secretariat, unless the Committee or a working group established under rule 89, paragraph 1, decides otherwise.

2. Two or more communications may be dealt with jointly if deemed appropriate by the Committee or a working group established under rule 89, paragraph 1.

**Rule 89**

1. The Committee may establish one or more working groups to make recommendations to the Committee regarding the fulfilment of the conditions of admissibility laid down in articles 1, 2, 3 and 5 (2) of the Protocol.

2. The rules of procedure of the Committee shall apply as far as possible to the meetings of the working group.

3. The Committee may designate special rapporteurs from among its membe.s to assist in the handling of communications.

**Rule 90**

With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group established under rule 89, paragraph 1, shall ascertain:

(a) That the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Protocol;

(b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual personally or by that individual's representative; a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally;

(c) That the communication does not constitute an abuse of the right of submission;

(d) That the communication is not incompatible with the provisions of the Covenant;

(e) That the same matter is not being examined under another procedure of international investigation or settlement;

(f) That the individual has exhausted all available domestic remedies.

**Rule 91**

1. As soon as possible after the communication has been received, the Committee, a working group established under rule 89, paragraph 1, or a special rapporteur designated under rule 89, paragraph 3, shall request the State party concerned to submit a written reply to the communication.

2. Within six months the State party concerned shall submit to the Committee written explanations or statements that shall relate both to the communication's admissibility and its merits as well as to any remedy that may have been provided in the matter, unless the Committee, working group or special rapporteur has decided, because of the exceptional nature of the case, to request a written reply that relates only to the question of admissibility. A State party that has been requested to submit a written reply that relates only to the question of admissibility is not precluded thereby from submitting, within six months of the request, a written reply that shall relate both to the communication's admissibility and its merits.

3. A State party that has received a request for a written reply under paragraph 1 both on admissibility and on the merits of the communication, may apply in writing, within two months, for the communication to be rejected as inadmissible, setting out the grounds for such inadmissibility. Submission of such an application shall not extend the period of

six months given to the State party to submit its written reply to the communication, unless the Committee, a working group established under rule 89, paragraph 1, or a special rapporteur designated under rule 89, paragraph 3, decides to extend the time for submission of the reply, because of the special circumstances of the case, until the Committee has ruled on the question of admissibility.

4. The Committee, a working group established under rule 89, paragraph 1, or a special rapporteur designated under rule 89, paragraph 3, may request the State party or the author of the communication to submit, within specified time limits, additional written information or observations relevant to the question of admissibility of the communication or its merits.

5. A request addressed to a State party under paragraph 1 of this rule shall include a statement of the fact that such a request does not imply that any decision has been reached on the question of admissibility.

6. Within fixed time limits, each party may be afforded an opportunity to comment on submissions made by the other party pursuant to this rule.

**Rule 92**

1. Where the Committee decides that a communication is inadmissible under the Protocol it shall as soon as possible communicate its decision, through the Secretary-General, to the author of the communication and, where the communication has been transmitted to a State party concerned, to that State party.

2. If the Committee has declared a communication inadmissible under article 5, paragraph 2, of the Protocol, this decision may be reviewed at a later date by the Committee upon a written request by or on behalf of the individual concerned containing information to the effect that the reasons for inadmissibility referred to in article 5, paragraph 2, no longer apply.

**D. Procedure for the consideration of communications on the merits**

**Rule 93**

1. In those cases in which the issue of admissibility is decided before receiving the State party's reply on the merits, if the Committee or a working group established under rule 89, paragraph 1, rules that the communication is admissible, that decision and all other relevant information shall be submitted, through the Secretary-General, to the State party concerned. The author of the communication shall also be informed, through the Secretary-General, of the decision.

2. Within six months, the State party concerned shall submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, that may have been taken by that State.

3. Any explanations or statements submitted by a State party pursuant to this rule shall be communicated, through the Secretary-General, to the author of the communication, who may submit any additional written information or observations within fixed time limits.

4. Upon consideration of the merits, the Committee may review a decision that a communication is admissible in the light of any explanations or statements submitted by the State party pursuant to this rule.

**Rule 94**

1. In those cases in which the parties have submitted information relating both to the questions of admissibility and the merits, or in which a decision on admissibility has already been taken and the parties have submitted information on the merits, the Committee shall consider the communication in the light of all written information made available to it by the individual and the State party concerned and shall formulate its views thereon. Prior thereto the Committee may refer the communication to a working group or to a special rapporteur to make recommendations to the Committee.

2. The Committee shall not decide on the merits of the communication without having considered the applicability of all the admissibility grounds referred to in the Optional Protocol.

3. The Views of the Committee shall be communicated to the individual and to the State party concerned.

**Rule 95**

1. The Committee shall designate a Special Rapporteur for follow-up on views adopted under article 5, paragraph 4, of the Optional Protocol, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's Views.

2. The Special Rapporteur may make such contacts and take such action as appropriate for the due performance of the follow-up mandate. The Special Rapporteur shall make such recommendations for further action by the Committee as may be necessary.

3. The Special Rapporteur shall regularly report to the Committee on follow-up activities.

4. The Committee shall include information on follow-up activities in its annual report.

## E. Rules concerning confidentiality

### Rule 96*

1. Communications under the Optional Protocol shall be examined by the Committee and its Working Group established pursuant to rule 89 in closed session. Oral deliberations and summary records shall remain confidential.

2. All working documents issued for the Committee, the Working Group established pursuant to rule 89 or the Special Rapporteur designated pursuant to rule 89 (3) by the Secretariat, including summaries of communications prepared prior to registration, the list of summaries of communications, and all drafts prepared for the Committee, its Working Group established pursuant to rule 89 or the Special Rapporteur designated pursuant to rule 89 (3) shall remain confidential, unless the Committee decides otherwise.

3. Paragraph 1 shall not affect the right of the author of a communication or the State party concerned to make public any submissions or information bearing on the proceedings. However, the Committee, the Working Group established pursuant to rule 89 or the Special Rapporteur designated pursuant to rule 89 (3) may, as deemed appropriate, request the author of a communication or the State party concerned to keep confidential the whole or part of any such submissions or information.

4. When a decision has been taken on the confidentiality pursuant to paragraph 3 above, the Committee, the Working Group established pursuant to rule 89 or the Special Rapporteur designated pursuant to rule 89 (3) may decide that all or part of the submissions and other information, such as the identity of the author, may remain confidential after the Committee's decision on inadmissibility, merits or discontinuance has been adopted.

5. Subject to paragraph 4, the Committee's decisions on inadmissibility, merits and discontinuance shall be made public. The decisions of the Committee or the Special Rapporteur designated pursuant to rule 89 (3) under rule 86 shall be made public. No advance copies of any Committee decision shall be issued.

6. The Secretariat is responsible for the distribution of the Committee's final decisions. It shall not be responsible for the reproduction and the distribution of submissions concerning communications.

### Rule 97

Information furnished by the parties within the framework of follow-up to the Committee's Views is not subject to confidentiality, unless the Committee decides otherwise. Decisions of the Committee relating to follow-up activities are equally not subject to confidentiality, unless the Committee decides otherwise.

---

* Rule 96, adopted at the 1585th meeting of the Committee on 10 April 1997, replaces old rules 96, 97 and 98.

## F. Individual opinions

### Rule 98

Any member of the Committee who has participated in a decision may request that his/her individual opinion be appended to the Committee's Views or decision.

### Notes

[a] E.2 in fine: adopted at the seventieth session.

[b] G.6.1 and 2: adopted at the seventieth session.

## Annex IV

## SUBMISSION OF REPORTS AND ADDITIONAL INFORMATION BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Afghanistan | Second periodic | 23 April 1989 | 25 October 1991[a, b] |
| Albania | Initial/Special | 3 January 1993 | Not yet received |
| Algeria | Third periodic | 1 June 2000 | Not yet received |
| Angola | Initial | 31 January 1994 | Not yet received |
| Argentina | Fourth periodic | 31 October 2005 | Not yet due |
| Armenia | Second periodic | 1 October 2001 | Not yet due |
| Australia | Fifth periodic | 31 July 2005 | Not yet due |
| Austria | Fourth periodic | 1 October 2002 | Not yet due |
| Azerbaijan | Second periodic | 12 November 1998 | 8 November 1999[b] |
| Bangladesh | Initial | 6 December 2001 | Not yet due |
| Barbados | Third periodic | 11 April 1991 | Not yet received |
| Belarus | Fifth periodic | 7 November 2001 | Not yet due |
| Belgium | Fourth periodic | 1 October 2002 | Not yet due |
| Belize | Initial | 9 September 1997 | Not yet received |
| Benin | Initial | 11 June 1993 | Not yet received |
| Bolivia | Third periodic | 31 December 1999 | Not yet received |
| Bosnia and Herzegovina | Initial | 5 March 1993 | Not yet received |
| Botswana | Initial | 8 December 2001 | Not yet due |
| Brazil | Second periodic | 23 April 1998 | Not yet received |
| Bulgaria | Third periodic | 31 December 1994 | Not yet received |
| Burkina Faso | Initial | 3 April 2000 | Not yet received |
| Burundi | Second periodic | 8 August 1996 | Not yet received |
| Cambodia | Second periodic | 31 July 2002 | Not yet due |
| Cameroon | Fourth periodic | 31 October 2000 | Not yet received |
| Canada | Fifth periodic | 8 April 2000 | Not yet received |
| Cape Verde | Initial | 5 November 1994 | Not yet received |
| Central African Republic | Second periodic | 9 April 1989 | Not yet received |
| Chad | Initial | 8 September 1996 | Not yet received |
| Chile | Fifth periodic | 30 April 2002 | Not yet received |
| Colombia | Fifth periodic | 2 August 2000 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Congo | Third periodic | 31 March 2003[b] | Not yet due |
| Costa Rica | Fifth periodic | 30 April 2004 | Not yet due |
| Côte d'Ivoire | Initial | 25 June 1993 | Not yet received |
| Croatia | Second periodic | 1 April 2005 | Not yet due |
| Cyprus | Fourth periodic | 1 June 2002 | Not yet due |
| Czech Republic | Second periodic | 1 August 2005 | Not yet due |
| Democratic People's Republic of Korea | Third periodic | 1 January 2004 | Not yet due |
| Democratic Republic of the Congo (formerly Zaire) | Third periodic | 31 July 1991 | Not yet received |
| Denmark | Fifth periodic | 31 October 2005 | Not yet due |
| Dominica | Initial | 16 September 1994 | Not yet received |
| Dominican Republic | Fifth periodic | 1 April 2005 | Not yet due |
| Ecuador | Fifth periodic | 1 June 2001 | Not yet due |
| Egypt | Third periodic | 31 December 1994 | Not yet received |
| El Salvador | Third periodic | 31 December 1995 | Not yet received |
| Equatorial Guinea | Initial | 24 December 1988 | Not yet received |
| Estonia | Second periodic | 20 January 1998 | Not yet received |
| Ethiopia | Initial | 10 September 1994 | Not yet received |
| Finland | Fifth periodic | 1 June 2003 | Not yet due |
| France | Fourth periodic | 31 December 2000 | Not yet received |
| Gabon | Third periodic | 31 October 2003 | Not yet due |
| Gambia | Second periodic | 21 June 1985 | Not yet received |
| Georgia | Second periodic | 2 August 2000 | Not yet received |
| Germany | Fifth periodic | 3 August 2000 | Not yet received |
| Ghana | Initial | 7 December 2001 | Not yet due |
| Greece | Initial | 4 August 1998 | Not yet received |
| Grenada | Initial | 5 December 1992 | Not yet received |
| Guatemala | Third periodic | 1 August 2005 | Not yet due |
| Guinea | Third periodic | 30 September 1994 | Not yet received |
| Guyana | Third periodic | 31 March 2003 | Not yet due |
| Haiti | Initial | 30 December 1996 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Honduras | Initial | 24 November 1998 | 2 April 1998[b] |
| Hong Kong Special Administrative Region (People's Republic of China)[c] | Second periodic (China) | 31 October 2003 | Not yet due |
| Hungary | Fourth periodic | 2 August 1995 | 12 December 2000[b] |
| Iceland | Fourth periodic | 30 October 2003 | Not yet due |
| India | Fourth periodic | 31 December 2001 | Not yet due |
| Iran (Islamic Republic of) | Third periodic | 31 December 1994 | Not yet received |
| Iraq | Fifth periodic | 4 April 2000 | Not yet received |
| Ireland | Third periodic | 31 July 2005 | Not yet due |
| Israel | Second periodic | 1 June 2000 | Not yet received |
| Italy | Fifth periodic | 1 June 2002 | Not yet due |
| Jamaica | Third periodic | 7 November 2001 | Not yet due |
| Japan | Fifth periodic | 31 October 2002 | Not yet due |
| Jordan | Fourth periodic | 21 January 1997 | Not yet received |
| Kazakhstan[c] | | | |
| Kenya | Second periodic | 11 April 1986 | Not yet received |
| Kuwait | Second periodic | 31 July 2004 | Not yet due |
| Kyrgyzstan | Second periodic | 31 July 2004 | Not yet due |
| Latvia | Second periodic | 14 July 1998 | Not yet received |
| Lebanon | Third periodic | 31 December 1999 | Not yet received |
| Lesotho | Second periodic | 30 April 2002 | Not yet due |
| Libyan Arab Jamahiriya | Fourth periodic | 1 October 2002 | Not yet due |
| Liechtenstein | Initial | 11 March 2000 | Not yet received |
| Lithuania | Second periodic | 7 November 2001 | Not yet due |
| Luxembourg | Third periodic | 17 November 1994 | Not yet received |
| Madagascar | Third periodic | 30 July 1992 | Not yet received |
| Malawi | Initial | 21 March 1995 | Not yet received |
| Mali | Second periodic | 11 April 1986 | Not yet received |
| Macao Special Administrative Region (People's Republic of China)[c] | Initial (China) | 31 October 2001 | Not yet due |
| Malta | Second periodic | 12 December 1996 | Not yet received |
| Mauritius | Fourth periodic | 30 June 1998 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Mexico | Fifth periodic | 30 July 2002 | Not yet due |
| Monaco | Second periodic | 1 August 2006 | Not yet due |
| Mongolia | Fifth periodic | 31 March 2003 | Not yet due |
| Morocco | Fifth periodic | 31 October 2003 | Not yet due |
| Mozambique | Initial | 20 October 1994 | Not yet received |
| Namibia | Initial | 27 February 1996 | Not yet received |
| Nepal | Second periodic | 13 August 1997 | Not yet received |
| Netherlands | Fourth periodic | 1 August 2006 | Not yet due |
| Netherlands (Antilles) | Fourth periodic | 1 August 2006 | Not yet due |
| Netherlands (Aruba) | Fifth periodic | 1 August 2006 | Not yet due |
| New Zealand | Fourth periodic | 27 March 1995 | 7 March 2001[b] |
| Nicaragua | Third periodic | 11 June 1991 | Not yet received |
| Niger | Second periodic | 31 March 1994 | Not yet received |
| Nigeria | Second periodic | 28 October 1999 | Not yet received |
| Norway | Fifth periodic | 31 July 2004 | Not yet due |
| Panama | Third periodic | 31 March 1992[c] | Not yet received |
| Paraguay | Second periodic | 9 September 1998 | Not yet received |
| Peru | Fourth periodic | 9 April 1998 | 3 July 1998 |
| Philippines | Second periodic | 22 January 1993 | Not yet received |
| Poland | Fifth periodic | 30 July 2003 | Not yet due |
| Portugal | Third periodic | 1 August 1991 | Not yet received |
| Republic of Korea | Third periodic | 31 October 2003 | Not yet due |
| Republic of Moldova | Initial | 25 April 1994 | 17 January 2001[b] |
| Romania | Fifth periodic | 30 July 2003 | Not yet due |
| Russian Federation | Fifth periodic | 4 November 1998 | Not yet received |
| Rwanda | Third periodic | 10 April 1992 | Not yet received |
| | Special[d] | 31 January 1995 | Not yet received |
| Saint Vincent and the Grenadines | Second periodic | 31 October 1991 | Not yet received |
| San Marino | Second periodic | 17 January 1992 | Not yet received |
| Senegal | Fifth periodic | 4 April 2000 | Not yet received |
| Seychelles | Initial | 4 August 1993 | Not yet received |
| Sierra Leone | Initial | 22 November 1997 | Not yet received |
| Slovakia | Second periodic | 31 December 2001 | Not yet due |
| Slovenia | Second periodic | 24 June 1997 | Not yet received |
| Somalia | Initial | 23 April 1991 | Not yet received |
| South Africa | Initial | 9 March 2000 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Spain | Fifth periodic | 28 April 1999 | Not yet received |
| Sri Lanka | Fourth periodic | 10 September 1996 | Not yet received |
| Sudan | Third periodic | 7 November 2001 | Not yet due |
| Suriname | Second periodic | 2 August 1985 | Not yet received |
| Sweden | Fifth periodic | 27 October 1999 | 23 October 2000[b] |
| Switzerland | Second periodic | 17 September 1998 | 29 September 1998[b] |
| Syrian Arab Republic | Third periodic | 1 April 2003 | Not yet due |
| Tajikistan | Initial | 3 April 2000 | Not yet received |
| Thailand | Initial | 28 January 1998 | Not yet received |
| The former Yugoslav Republic of Macedonia | Second periodic | 1 June 2000 | Not yet received |
| Togo | Third periodic | 30 December 1995 | 19 April 2001[b] |
| Trinidad and Tobago | Fifth periodic | 31 October 2003 | Not yet due |
| Tunisia | Fifth periodic | 4 February 1998 | Not yet received |
| Turkmenistan | Initial | 31 July 1998 | Not yet received |
| Uganda | Initial | 20 September 1996 | Not yet received |
| Ukraine | Fifth periodic | 18 August 1999 | 20 September 1999[b] |
| United Kingdom of Great Britain and Northern Ireland | Fifth periodic | 18 August 1999 | 11 October 1999[b] |
| United Kingdom of Great Britain and Northern Ireland (Overseas Territories) | Fifth periodic | 18 August 1999 | 9 December 1999[b] |
| United Republic of Tanzania | Fourth periodic | 1 June 2002 | Not yet due |
| United States of America | Second periodic | 7 September 1998 | Not yet received |
| Uruguay | Fifth periodic | 21 March 2003 | Not yet due |
| Uzbekistan | Second periodic | 1 April 2004 | Not yet due |
| Venezuela | Fourth periodic | 1 April 2005 | Not yet due |
| Viet Nam | Second periodic | 30 July 1991 | 3 April 2001[b] |
| Yemen | Third periodic | 8 May 1998 | 17 July 2001 |
| Yugoslavia | Fourth periodic | 3 August 1993 | 5 March 1999[b, f] |
| Zambia | Third periodic | 30 June 1998 | Not yet received |
| Zimbabwe | Second periodic | 1 June 2002 | Not yet due |

**Notes**

[a] At its fifty-fifth session, the Committee requested the Government of Afghanistan to submit information updating the report before 15 May 1996 for consideration at its fifty-seventh session. No additional information was received. At its sixty-seventh session the Committee invited Afghanistan to present its report at the sixty-eighth session. The State party asked for a postponement of the examination of the report. At its seventy-first session, the Committee decided to consider the situation of Afghanistan during its seventy-third session in October/November 2001, in application of point G.6.2 of the Consolidated Guidelines for States parties' reports and rule 68, paragraph 2, of the Committee's rules of procedure.

[b] Not yet examined.

[c] Although a declaration of succession has not been received, the people within the territory of the State - which constituted part of a former State party to the Covenant - continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40), vol. I, paras. 48 and 49).

[d] Pursuant to a Committee decision of 27 October 1994 (fifty-second session), Rwanda was requested to submit by 31 January 1995 a report relating to recent and current events affecting the implementation of the Covenant in the country for consideration at the fifty-second session. At the sixty-eighth session two members of the Bureau of the Committee met with the Ambassador of Rwanda to the United Nations in New York, who undertook to submit the overdue reports in the course of the year 2000.

[e] Although not itself a party to the Covenant, the People's Republic of China has assured the reporting obligation under article 40 with respect to Hong Kong and Macao, which were previously under British and Portuguese administration respectively.

[f] The fourth periodic report of Yugoslavia was scheduled to be examined during the seventy-first session of the Committee. By note verbale of 18 January 2001, the Government requested a postponement of the consideration of the report. During the seventy-first session, the Permanent Mission of Yugoslavia to the United Nations indicated that an addendum to the fourth periodic report would be submitted during the summer of 2001.

## Annex V

## STATUS OF REPORTS CONSIDERED DURING THE PERIOD UNDER REVIEW AND OF REPORTS STILL PENDING BEFORE THE COMMITTEE

| State party | Date due | Date of submission | Status |
|---|---|---|---|
| | | **A. Initial reports** | |
| Croatia | 7 October 1992 | 19 November 1999 | Considered on 28 and 29 March 2001 (seventy-first session) |
| Czech Republic | 31 December 1993 | 3 March 2000 | Considered on 11 and 12 July 2001 (seventy-second session) |
| Monaco | 27 November 1998 | 30 December 1999 | Considered on 13 July 2001 (seventy-second session) |
| Republic of Moldova | 25 April 1994 | 17 January 2001 | In translation |
| Uzbekistan | 27 December 1996 | 10 June 1999 | Considered on 26 and 27 March 2001 (seventy-first session) |
| | | **B. Second periodic reports** | |
| Afghanistan | 23 April 1989 | 25 October 1991 | Issued, not yet considered[a] |
| Azerbaijan | 12 November 1998 | 8 November 1999 | Issued, not yet considered |
| Guatemala | 6 August 1998 | 6 October 1999 | Considered on 17 and 18 July 2001 (seventy-second session) |
| Democratic People's Republic of Korea | 13 December 1987 | 25 December 1999 | Considered on 19 and 20 July 2001 (seventy-second session) |
| Switzerland | 17 September 1998 | 29 September 1998 | Issued, not yet considered (scheduled for the seventy-third session) |

| State party | Date due | Date of submission | Status |
|---|---|---|---|
| Syrian Arab Republic | 18 August 1984 | 19 January 2000 | Considered on 30 March 2001 (seventy-first session) |
| Georgia | 2 August 2000 | 26 August 2000 | Issued, not yet considered |
| Viet Nam | 30 July 1991 | 3 April 2001 | In translation |
| | **C. Third periodic reports** | | |
| Argentina | 7 November 1997 | 20 July 1998 | Considered on 25 and 26 October 2000 (seventieth session) |
| Netherlands (including Aruba and Netherlands Antilles) | 31 October 1991 | 10 February 1999 | Considered on 9 and 10 July 2001 (seventy-second session) |
| Togo | 30 December 1995 | 19 April 2001 | In translation |
| Trinidad and Tobago | 20 March 1990 | 15 September 1999 | Considered on 17 October 2000 (seventieth session) |
| Venezuela | 31 December 1993 | 8 July 1998 | Considered on 19 and 20 March 2001 (seventy-first session) |
| Yemen | 8 May 1998 | 17 July 2001 | In translation |
| | **D. Fourth periodic reports** | | |
| Dominican Republic | 3 April 1994 | 6 October 1999 | Considered on 23 March 2001 (seventy-first session) |
| Hungary | 2 August 1995 | 12 December 2000 | Issued, not yet considered |
| Peru | 9 April 1998 | 3 July 1998 | Considered on 23 and 24 October 2000 (seventieth session) |
| Federal Republic of | 3 August 1993 | 5 March 1999 | Issued, but not yet |

| State party | Date due | Date of submission | Status |
|---|---|---|---|
| Yugoslavia | | | considered[a] |
| | **E. Fifth periodic reports** | | |
| Ukraine | 18 August 1999 | 20 September 1999 | Issued, not yet considered (scheduled for seventy-third session) |
| Sweden | 27 October 1999 | October 2000 | Issued, but not yet considered |
| United Kingdom of Great Britain and Northern Ireland | 18 August 1999 | 11 October 1999 | Issued, not yet considered (scheduled for seventy-third session) |
| United Kingdom of Great Britain and Northern Ireland (Overseas Territories) | 18 August 1999 | 9 December 1999 | Issued, but not yet considered (scheduled for seventy-third session) |

**Notes**

[a] The report was scheduled for consideration by the Committee at the seventy-first session; on 18 January 2001, the State party requested a postponement of consideration of the report (see chap. III, para. 68).

## Annex VI

## GENERAL COMMENT ADOPTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

### GENERAL COMMENT NO. 29 [72]

### Derogations from provisions of the Covenant during a state of emergency

**[Future document CCPR/C/21/Rev.1/Add.11]**

(adopted at the 1950th meeting on 24 July 2001)

1. Article 4 of the Covenant is of paramount importance for the system of protection for human rights under the Covenant. On the one hand, it allows for a State party unilaterally temporarily to derogate from a part of its obligations under the Covenant. On the other hand, article 4 subjects both this very measure of derogation, as well as its material consequences, to a specific regime of safeguards. The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant. In this general comment, replacing its General Comment No. 5, adopted in the thirteenth session (1981), the Committee seeks to assist States parties to meet the requirements of article 4.

2. Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. The latter requirement is essential for the maintenance of the principles of legality and rule of law at times when they are most needed. When proclaiming a state of emergency with consequences that could entail derogation from any provision of the Covenant, States must act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers; it is the task of the Committee to monitor that the laws in question enable and secure compliance with article 4. So that the Committee can perform its task, States parties to the Covenant should include in their reports submitted under article 40 sufficient and precise information about their law and practice in the field of emergency powers.

3. Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by article 4, paragraph 1. During armed conflict, whether international or non-international, rules of international humanitarian law become applicable and help, in addition to the provisions in article 4 and article 5, paragraph 1, of the Covenant, to prevent the abuse of a State's emergency powers. The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. If States parties consider invoking article 4 in other situations than an armed conflict, they should carefully consider the justification why such a measure is necessary and legitimate in the circumstances. On a number of occasions

the Committee has expressed its concern over States parties that appear to have derogated from rights protected by the Covenant, or whose domestic law appears to allow such derogation in situations not covered by article 4.[a]

4. A fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Derogation from some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant.[b] Nevertheless, the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. In practice, this will ensure that no provision of the Covenant, however validly derogated from, will be entirely inapplicable to the behaviour of a State party. When considering State party reports, the Committee has expressed its concern over insufficient attention being paid to the principle of proportionality.[c]

5. The issues of when rights can be derogated from, and to what extent, cannot be separated from the provision in article 4, paragraph 1, of the Covenant according to which any measures derogating from a State party's obligations under the Covenant must be limited "to the extent strictly required by the exigencies of the situation". This condition requires that States parties provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation. If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation. In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (art. 12) or freedom of assembly (art. 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.

6. The fact that some of the provisions of the Covenant have been listed in article 4, paragraph 2, as not being subject to derogation, does not mean that other articles in the Covenant may be subjected to derogations at will, even where a threat to the life of the nation exists. The legal obligation to narrow down all derogations to those strictly required by the exigencies of the situation establishes both for States parties and for the Committee a duty to conduct a careful analysis under each article of the Covenant based on an objective assessment of the actual situation.

7. Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11

(prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion). The rights enshrined in these provisions are non-derogable by the very fact that they are listed in article 4, paragraph 2. The same applies, in relation to States that are parties to the Second Optional Protocol to the Covenant, for the undertaking to abolish the death penalty, as prescribed in article 6 of that Protocol. Conceptually, the qualification of a Covenant provision as a non-derogable one does not mean that no limitations or restrictions would ever be justified. The reference in article 4, paragraph 2, to article 18, a provision that includes a specific clause on restrictions in its paragraph 3, indicates that the permissibility of restrictions is independent of the issue of derogability. Even in times of most serious public emergencies, States that interfere with the freedom to manifest one's religion or belief must justify their actions by referring to the requirements specified in article 18, paragraph 3. On several occasions the Committee has expressed its concern of rights that are non-derogable according to article 4, paragraph 2, being either derogated from or under a risk of derogation due to inadequacies in the legal regime of the State party.[d]

8. According to article 4, paragraph 1, one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Even though article 26 or the other Covenant provisions related to non-discrimination (arts. 2, 3, 14, para. 1, 23, para. 4, 24, para. 1, and 25) have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances. In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.

9. Furthermore, article 4, paragraph 1, requires that no measure derogating from the provisions of the Covenant may be inconsistent with the State party's other obligations under international law, particularly the rules of international humanitarian law. Article 4 of the Covenant cannot be read as justification for derogation from the Covenant if such derogation would entail a breach of the State's other international obligations, whether based on treaty or general international law. This is reflected also in article 5, paragraph 2, of the Covenant according to which there shall be no restriction upon or derogation from any fundamental rights recognized in other instruments on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.

10. Although it is not the function of the Human Rights Committee to review the conduct of a State party under other treaties, in exercising its functions under the Covenant the Committee has the competence to take a State party's other international obligations into account when it considers whether the Covenant allows the State party to derogate from specific provisions of the Covenant. Therefore, when invoking article 4, paragraph 1, or when reporting under article 40 on the legal framework related to emergencies, States parties should present information on their other international obligations relevant for the protection of the rights in question, in particular

those obligations that are applicable in times of emergency.[e] In this respect, States parties should duly take into account the developments within international law as to human rights standards applicable in emergency situations.[f]

11. The enumeration of non-derogable provisions in article 4 is related to, but not identical with, the question whether certain human rights obligations bear the nature of peremptory norms of international law. The proclamation of certain provisions of the Covenant as being of a non-derogable nature, in article 4, paragraph 2, is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g., arts. 6 and 7). However, it is apparent that some other provisions of the Covenant were included in the list of non-derogable provisions because it can never become necessary to derogate from these rights during a state of emergency (e.g., arts. 11 and 18). Furthermore the category of peremptory norms extends beyond the list of non-derogable provisions as given in article 4, paragraph 2. States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.

12. In assessing the scope of legitimate derogation from the Covenant, one criterion can be found in the definition of certain human rights violations as crimes against humanity. If action conducted under the authority of a State constitutes a basis for individual criminal responsibility for a crime against humanity by the persons involved in that action, article 4 of the Covenant cannot be used as a justification that a state of emergency exempted the State in question from its responsibility in relation to the same conduct. Therefore, the recent codification of crimes against humanity, for jurisdictional purposes, in the Statute of the International Criminal Court is of relevance in the interpretation of article 4 of the Covenant.[g]

13. In those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under article 4. Below, some illustrative examples are presented.

(a) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Although this right, prescribed in article 10 of the Covenant, is not separately mentioned in the list of non-derogable rights in article 4, paragraph 2, the Committee believes that here the Covenant expresses a norm of general international law not subject to derogation. This is supported by the reference to the inherent dignity of the human person in the preamble of the Covenant and by the close connection between articles 7 and 10.

(b) The prohibitions against taking of hostages, abductions or unacknowledged detention are not subject to derogation. The absolute nature of the prohibition of such acts, even in times of emergency, is justified by the status of these norms as norms of general international law.

(c) The Committee is of the opinion that the international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances. This is reflected in the prohibition against genocide in international law, in the inclusion of a non-discrimination clause in article 4 itself (para. 1), as well as in the non-derogable nature of article 18.

(d) As confirmed by the Statute of the International Criminal Court, deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitutes a crime against humanity.[h] The legitimate right to derogate from article 12 of the Covenant during a state of emergency can never be accepted as justifying such measures.

(e) No declaration of a state of emergency made pursuant to article 4, paragraph 1, may be invoked as justification for a State party to engage itself, contrary to article 20, in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.

14. Article 2, paragraph 3, of the Covenant requires a State party to the Covenant to provide remedies for any violation of the provisions of the Covenant. This clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of their procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant, to provide a remedy that is effective.

15. It is inherent in the protection of rights explicitly recognized as non-derogable in article 4, paragraph 2, that they must be secured by procedural guarantees, including often judicial guarantees. The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. Article 4 may not be resorted to in a way that would result in derogation from non-derogable rights. Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14 and 15.

16. Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.[i]

17. In paragraph 3 of article 4, States parties, when they resort to their power of derogation under article 4, commit themselves to a regime of international notification. A State party availing itself of the right of derogation must immediately inform the other States parties, through the Secretary-General of the United Nations, of the provisions it has derogated from and of the reasons for such measures. Such notification is essential not only for the discharge of the Committee's functions, in particular in assessing whether the measures taken by the State party were strictly required by the exigencies of the situation, but also to permit other States parties to monitor compliance with the provisions of the Covenant. In view of the summary character of many of the notifications received in the past, the Committee emphasizes that the notification should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached regarding their law. Additional notifications are required if the State party subsequently takes further measures under article 4, for instance by extending the duration of a state of emergency. The requirement of immediate notification applies equally in relation to the termination of derogation. These obligations have not always been respected: States parties have failed to notify other States parties, through the Secretary-General, of a proclamation of a state of emergency and of the resulting measures of derogation from one or more provisions of the Covenant; and States parties have sometimes neglected to submit a notification of territorial or other changes in the exercise of their emergency powers.[j] Sometimes, the existence of a state of emergency and the question whether a State party has derogated from provisions of the Covenant have come to the attention of the Committee only incidentally, in the course of the consideration of a State party's report. The Committee emphasizes the obligation of immediate international notification whenever a State party takes measures derogating from its obligations under the Covenant. The duty of the Committee to monitor the law and practice of a State party for its compliance with article 4 does not depend on whether that State party has submitted a notification.

**Notes**

[a] See the following Concluding Observations: Tanzania (1992), CCPR/C/79/Add.12, para. 7; Dominican Republic (1993), CCPR/C/79/Add.18, para. 4; United Kingdom (1995), CCPR/C/79/Add.55, para. 23; Peru (1996), CCPR/C/79/Add.67, para. 11; Lebanon (1997), CCPR/C/79/Add.78, para. 10; Bolivia (1997), CCPR/C/79/Add.74, para. 14; Colombia (1997), CCPR/C/79/Add.76, para. 25; Israel (1998), CCPR/C/79/Add.93, para. 11; Uruguay (1998), CCPR/C/79/Add.90, para. 8.

[b] See, for instance, articles 12 and 19 of the Covenant.

[c] See, e.g., Concluding Observations on Israel (1998), CCPR/C/79/Add.93, para. 11.

[d] See the following Concluding Observations: Dominican Republic (1993), CCPR/C/79/Add.18, para. 4; Nepal (1994), CCPR/C/79/Add.42, para. 9; Jordan (1994), CCPR/C/79/Add.35, para. 6; Russian Federation (1995), CCPR/C/79/Add.54, para. 27; Zambia (1996), CCPR/C/79/Add.62, para. 11; Gabon (1996), CCPR/C/79/Add.71, para. 10; Colombia (1997), CCPR/C/79/Add.76, para. 25; Iraq (1997), CCPR/C/79/Add.84, para. 9;

Armenia (1998), CCPR/C/79/Add.100, para. 7; Israel (1998), CCPR/C/79/Add.93, para. 11; Uruguay (1998) CCPR/C/79/Add.90, para. 8; Mongolia (2000), CCPR/C/79/Add.120, para. 14; Kyrgyzstan (2000), CCPR/CO/69/KGZ, para. 12.

[e] Reference is made to the Convention on the Rights of the Child which has been ratified by almost all States parties to the Covenant and does not include a derogation clause. As article 38 of the Convention clearly indicates, the Convention is applicable in emergency situations.

[f] Reference is made to reports of the Secretary-General to the Commission on Human Rights, submitted pursuant to Commission resolution 1998/29 on minimum humanitarian standards (later: fundamental standards of humanity), E/CN.4/1999/92, E/CN.4/2000/94 and E/CN.4/2001/91, and to earlier efforts to identify fundamental rights applicable in all circumstances, for instance the Paris Minimum Standards of Human Rights Norms in a State of Emergency (ILA), the Syracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the Final Report of Mr. Leandro Despouy, Special Rapporteur of the Sub-Commission, on the protection of human rights and states of emergency (E/CN.4/Sub.2/1997/19), Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Turku (Åbo) Declaration of Minimum Humanitarian Standards (1990; E/CN.4/1995/116). As a field of ongoing further work reference is made to the decision of the 26th International Conference of the Red Cross and Red Crescent (1995) to assign the ICRC the task of preparing a report on the customary rules of international humanitarian law, applicable in international and non-international armed conflicts.

[g] See, articles 6 (genocide) and 7 (crimes against humanity) of the Statute which by 19 July 2001 had been ratified by 37 States. While many of the specific forms of conduct enlisted in article 7 of the Statute are directly linked to violations against those human rights that are enlisted as non-derogable provisions in article 4, paragraph 2, of the Covenant, the category of crimes against humanity as defined in that provision covers also violations of some provisions of the Covenant that have not been mentioned in the said provision of the Covenant. For example, certain grave violations of article 27 may at the same time constitute genocide under article 6 of the ICC Statute, and article 7, in turn, covers practices that are related to, besides articles 6, 7 and 8 of the Covenant, also articles 9,12, 26 and 27.

[h] See, articles 7 (1) (d) and 7 (2) (d) of the Statute of the International Criminal Court.

[i] See, the Committee's Concluding Observations on Israel, 1998, para, 21: "... The Committee considers the present application of administrative detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. The Committee stresses, however, that a State party may not depart from the requirement of effective judicial review of detention." See, also United Nations document A/49/40, Supplement No. 40, vol. I, annex XI, the response by the Committee to the Submission on Prevention of Discrimination and Protection of Minorities, concerning a draft third optional protocol to the

Covenant: "The Committee is satisfied that States parties generally understand that the right to habeas corpus and amparo should not be limited in situations of emergency, Furthermore, the Committee is of the view that the remedies provided in article 9, paragraphs 3 and 4, read in conjunction with article 2 are inherent to the Covenant as a whole."

[j] Concluding Observations on Peru (1992), CCPR/C/79/Add.8, para. 10; Ireland (1993), CCPR/C/79/Add.21, para. 11; Egypt (1993), CCPR/C/79/Add.23, para. 7; Cameroon (1994), CCPR/C/79/Add.33, para. 7; Russian Federation (1995), CCPR/C/79/Add.54, para. 27; Zambia (1996), CCPR/C/79/Add.62, para. 11; Lebanon (1997), CCPR/C/79/Add.78, para. 10; India (1997), CCPR/C/79/Add.81, para. 19; Mexico (1999), CCPR/C/79/Add.109, para. 12.

**Annex VII**

**LIST OF STATES PARTIES' DELEGATIONS THAT PARTICIPATED IN THE CONSIDERATION OF THEIR RESPECTIVE REPORTS BY THE HUMAN RIGHTS COMMITTEE AT ITS SEVENTIETH, SEVENTY-FIRST AND SEVENTY-SECOND SESSIONS**

**(Listed in order in which their reports were considered)**

**TRINIDAD AND TOBAGO**

| | |
|---|---|
| Representative | Ramesh Lawrence Maharaj S.C., M.P. Attorney General and Minister of Legal Affairs |
| Advisers | Ms. Christine Sookram, Permanent Secretary, Ministry of the Attorney-General and Legal Affairs<br>Ms. Mary-Ann Richards, Deputy Permanent Representative and Chargé d'Affaires a.i., Permanent Mission, Geneva<br>Mr. Peter J. Pursglove, Legal Consultant in the Ministry of the Attorney-General and Legal Affairs<br>Ms. Debbie Sirjusingh, Deputy Director, Human Rights Unit, Ministry of the Attorney-General and Legal Affairs<br>Ms. Lauren Boodhoo, First Secretary, Permanent Mission, Geneva |

**DENMARK**

| | |
|---|---|
| Representative | Mr. Tyge Lehmann, Ambassador, Ministry of Foreign Affairs, Copenhagen |
| Advisers | Mr. Jens Kruse Mikkelsen, Head of Department, Ministry of Justice<br>Ms. Lise Puggaard, Head of Section, Ministry of Justice<br>Mr. Soren Skibsted, Head of Section, Ministry of Justice<br>Mr. Martin Isenbecker, Deputy Head of Division, Ministry of the Interior<br>Ms. Helene Urth, Deputy Head of Division, Ministry of the Interior<br>Ms. Agnete Andersen, Special Advisor, Ministry of Labour<br>Mr. Inuuteq Holm Olsen, First Secretary of Embassy, Greenland Home Rule Government |

**GABON**

| | |
|---|---|
| Representative | M. Pascal Désiré Missongo, Ministre de la Justice, Garde des Sceaux, Chargé des droits de l'homme |
| Advisers | Mme. Yolenade Bike, Ambassadeur, Chef de delegation adjoint<br>M. Corentin Hervo-Akendengue, Premier Conseiller<br>M. Ndong Essono, Conseiller du Ministre<br>Mme. Clotilde Mboumba Loueyi, épouse Bouddhou, Conseiller<br>M. Guy Germain Pambou, Conseiller |

**PERU**

| | |
|---|---|
| Representative | Sr. Edgardo Mosqueira Medina, Ministro de Trabajo y Promoción Social |
| Advisers | Sr. Jorge Voto-Bernales, Representante Permanente de Perú en Ginebra<br>Sr. Luis Quesada Inchaúsegui, Director de Derechos Humanos del Ministerio de Relaciones Exteriores<br>Sr. Milagros Maraví, miembro de la Comisión de Alto Nivel para Asuntos de Derechos Humanos<br>Sr. Martín Lazo Piccardo, Miembro de la Comisión de Alto Nivel para Asuntos de Derechos Humanos<br>Sra. Carolina Leciñana Falconí, Secretaria Ejecutiva del Consejo Nacional de Derechos Humanos<br>Sr. Luis Enrique Chávez Basagoita, Consejero de la Representación Permanente de Perú en Ginebra<br>Sr. Aldo Figueroa, Asesor de la Alta Dirección del Ministerio de Justicia |

**ARGENTINA**

| | |
|---|---|
| Representative | Sr. Leandro Despouy, Embajador, Representante Especial para los Derechos Humanos en el Ambito Internacional, Ministerio del Relaciones Exteriores, Comercio Internacional y Culto |
| Advisers | Sr. Eugenio Zaffaroni, Interventor del Instituto Nacional contra la Discriminación<br>Sra. Norma Nascimbene de Dumont, Ministro, Misión Permanente en Ginebra<br>Sr. Sergio Cerda, Consejero, Misión Permanente en Ginebra<br>Sra. Marta Laferriere, Funcionaria de la Secretaría de Política Penitenciaria y Readaptación Social del Ministerio de Justicia y Derechos Humanos<br>Sr. Waldo Luis Villapando, Asesor del Instituto Nacional contra la Discriminación |

**VENEZUELA**

| | |
|---|---|
| Representative | Sr. José Rafael Avendaño, Director de Política Interior del Ministerio Interior y Justicia |
| Advisers | Sr. Ignacio Arcaya, Embajador, Representante Permanente de Venezuela ante las Naciones Unidas<br>Sra. Hillys López de Penso, Vice Fiscal General de la República, Ministerio Público<br>Sr. Germán Saltrón, Director General de la Defensoría del Pueblo<br>Sra. Alis Carolina Fariñas Sanguino, Fiscal Vigésimo Primero, Ministerio Público |

**DOMINICAN REPUBLIC**

| | |
|---|---|
| Representative | Sra. Radys Abreu de Polanco, Asesora para Asuntos de Derechos Humanos de la Secretaría de Estado de Relaciones Exteriores |
| Advisers | Sra. Anabella de Castro, Ministra Consejera, Encargada de Asuntos de Derechos Humanos<br>Sr. Julio César Castaños Guzmán, Magistrado de la Junta Central Electoral<br>Teniente Coronel José Francisco García Lara, Sub-Director del Departamento Legal de la Policía Nacional<br>Sr. Francisco Cadena Moquete, Abogado Ayudante del Procurador General de la República<br>Capitán del Ejército Nacional Randolfo Núñez Vargas, Asesor Especial del Director de Migración y Director de la Escuela de Capacitación Técnica de Migración |

**UZBEKISTAN**

| | |
|---|---|
| Representative | Mr. Akmal Saidov, Chief of the National Center on Human Rights, Chairman of the Committee for Democratic Institutions, Non-Governmental Organizations and Citizen Self-Governance Bodies of the Oliy Majlis (Parliament) |
| Adviser | Mr. M. Khakimov, Head of the Department of International Law of the Ministry of Justice |

**REPUBLIC OF CROATIA**

| | |
|---|---|
| Representative | Ms. Lidjia Lukina Karajkovic, Assistant Minister of Justice, Administration and Local Self-Government |
| Advisers | Mr. Branko Smerdel, Zagreb Law Faculty<br>Mr. Zarko Katic, Assistant Minister of the Interior<br>Mr. Damir Kukavica, Head of Department, Ministry of the Interior<br>Mr. Marin Mrcela, Judge, Zagreb County Court<br>Mr. Dubravka Simonovic, Minister Plenipotentiary, Permanent Mission of the Republic of Croatia to the United Nations<br>Mr. Branko Socanac, Head of Department, Ministry of Foreign Affairs<br>Mr. Josko Klisovic, Counsellor, Permanent Mission of the Republic of Croatia to the United Nations |

**SYRIAN ARAB REPUBLIC**

| | |
|---|---|
| Representative | Mr. Fayssal Mekdad, Counsellor |
| Advisers | Mr. Mikhail Wehbe, Ambassador, Permanent Representative<br>Mr. Abboud Sarraj, Dean of the Faculty of Law, University of Damascus<br>Mr. Mohamed Haj Ibrahim, Attaché<br>Ms. Rania Haj Ali, Attaché |

**NETHERLANDS**

| | |
|---|---|
| Representative | Mr. Pieter Ramaer, Head of Political and Security Affairs Division, Ministry of Foreign Affairs, The Hague |
| Advisers | Mr. Roland Bocker, International Law Division, Senior Legal Adviser, Ministry of Foreign Affairs, The Hague<br>Mrs. Sonja van der Meer, Senior Adviser, United Nations and International Financial Departments, Ministry of Foreign Affairs, The Hague<br>Mrs. Claudia Staal, Senior Adviser, Department of International Affairs, Ministry of Social Affairs and Employment, The Hague<br>Mr. Marteen Prinsen, Head of Department of Constitutional Affairs and Legislation, Ministry of the Interior and Kingdom Relations, The Hague<br>Mr. Peter Hartog, Senior Adviser, Department International Affairs, Ministry of Health, Welfare and Sport, The Hague<br>Mr. B. Wijnberg<br>Mr. Roscam Abbing, Legal Counsellor of the Minister on Health Law, Ministry of Health, Welfare and Sport, The Hague |

**CZECH REPUBLIC**

| | |
|---|---|
| Representative | Mr. Jan Jarab, Government Representative for Human Rights |
| Advisers | Mr. Alexander Slaby, Director General, Ministry of Foreign Affairs<br>Mr. Milan Hovorka, Ambassador, Chargé d'Affaires, Permanent Mission of the Czech Republic, Geneva<br>Mr. Radim Bures, Deputy Director, Department of Crime Prevention, Ministry of the Interior<br>Ms. Simona Drahonovska, Human Rights Department, Ministry of Foreign Affairs<br>Ms. Veronika Pastrnakova, Secretary, Section of Civil and Political Rights, Council for Human Rights of the Government<br>Mr. Zdenek Sovák, President of the Penal Senate, Supreme Court<br>Ms. Ivana Schellongová, Second Secretary, Permanent Mission of the Czech Republic, Geneva |

**MONACO**

| | |
|---|---|
| Representative | M. Bernard Fautier, Ambassadeur, Représentant Permanent de la Principauté de Monaco auprès de l'Office des Nations Unies |
| Advisers | M. Jean-Charles Sacotte, Conseiller technique auprès du Conseiller de Gouvernement pour les Finances et l'Economie<br>M. Jean-Philippe Bertani, Deuxième Secrétaire de la Mission Permanente de la Principauté de Monaco auprès de l'Office des Nations Unies |

**GUATEMALA**

| | |
|---|---|
| Representative | Sr. Ricardo Alvarado Ortigoza, Presidente de la Comisión Presidencial de Derechos Humanos |
| Advisers | Sr. Antonio Arenales Forno, Embajador, Representante Permanente<br>Sra. Carla Rodríguez Mancia |

**DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA**

| | |
|---|---|
| Representative | Mr. Ri Chol, Ambassador, Permanent Representative to the United Nations Office at Geneva |
| Advisers | Mr. Sim Hyong Il, Director, Legislation Department, Presidium of the Supreme People's Assembly<br>Mr. Kim Yong Chol, Counsellor, Central Public Prosecutors Office<br>Mr. Ri Gi Sum, Counsellor, Central Court<br>Mr. Jong Song Il, Division Director; Ministry of Foreign Affairs<br>Mr. Pak Dok Hun, Senior Researcher, Ministry of Foreign Affairs<br>Mr. O Chun Thaek, Official, Cabinet Office<br>Mr. Jong Jong Duk, Interpreter<br>Mr. Kim Song Chol, Counsellor, Permanent Mission<br>Mr. Kim Yong Ho, Second Secretary, Permanent Mission |

## Annex VIII

## LIST OF DOCUMENTS ISSUED DURING THE REPORTING PERIOD

### A. Reports of States parties considered (in the order of examination)

| | |
|---|---|
| CCPR/C/TTO/99/3 | Third and fourth periodic reports of the Republic of Trinidad and Tobago |
| CCPR/C/DNK/99/4 | Fourth periodic report of Denmark |
| CCPR/C/ARG/98/3 | Third periodic report of Argentina |
| CCPR/C/128/Add.1 | Second periodic report of Gabon |
| CCPR/C/PER/98/4 | Fourth periodic report of Peru |
| CCPR/C/VEN/1999/3 | Third periodic report of Venezuela |
| CCPR/C/DOM/1999/3 | Fourth periodic report of the Dominican Republic |
| CCPR/C/UZB/1999/1 | Initial report of Uzbekistan |
| CCPR/C/HRV/2000/1 | Initial report of Croatia |
| CCPR/C/SYR/2000/2 | Second periodic report of the Syrian Arab Republic |
| CCPR/C/NETH/1999/3 | Third periodic report of the Netherlands (including Netherlands Antilles and Aruba) |
| CCPR/C/CZE/2000/1 | Initial report of the Czech Republic |
| CCPR/C/MCO/2000/1 | Initial report of the Principality of Monaco |
| CCPR/C/GUA/1999/2 | Second periodic report of Guatemala |
| CCPR/C/PRK/2000/2 | Second periodic report of the Democratic People's Republic of Korea |

### B. Reports of States parties issued but not yet considered

| | |
|---|---|
| CCPR/C/CH/1998/2 | Second periodic report of Switzerland |
| CCPR/C/AZE/99/2 | Second periodic report of the Azerbaijani Republic |
| CCPR/C/UKR/99/5 | Fifth periodic report of Ukraine |

| | |
|---|---|
| CCPR/C/UKOT/99/5 | Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (Overseas territories) |
| CCPR/C/YUG/99/4 | Fourth periodic report of the Federal Republic of Yugoslavia |
| CCPR/C/HUN/2000/4 | Fourth periodic report of Hungary |
| CCPR/C/GEO/2000/2 | Second periodic report of Georgia |
| CCPR/C/SWE/2000/5 | Fifth periodic report of Sweden |
| CCPR/C/MDA/2001/1 | Initial report of the Republic of Moldova |
| CCPR/C/NZE/2001/4 | Fourth periodic report of New Zealand |
| CCPR/C/VNM/2001/2 | Second periodic report of Viet Nam |
| CCPR/C/TGO/2001/3 | Third periodic report of Togo |
| CCPR/C/YEM/2001/3 | Third periodic report of Yemen |

### C. Concluding Observations of the Human Rights Committee on initial and periodic reports of States parties

| | |
|---|---|
| CCPR/C/CO/70/TTO | Concluding observations on the third and fourth periodic reports of Trinidad and Tobago |
| CCPR/C/CO/70/DNK | Concluding observations on the fourth periodic report of Denmark |
| CCPR/C/CO/70/ARG | Concluding observations on the third periodic report of Argentina |
| CCPR/C/CO/70/GAB | Concluding observations on the second periodic report of Gabon |
| CCPR/C/CO/70/PER | Concluding observations on the fourth periodic report of Peru |
| CCPR/C/CO/71/VEN | Concluding observations on the third periodic report of Venezuela |

| | |
|---|---|
| CCPR/C/CO/71/DOM | Concluding observations on the fourth periodic report of the Dominican Republic |
| CCPR/C/CO/71/UZB | Concluding observations on the initial report of Uzbekistan |
| CCPR/C/CO/71/HRV | Concluding observations on the initial report of Croatia |
| CCPR/C/CO/71/SYR | Concluding observations on the second periodic report of the Syrian Arab Republic |
| CCPR/C/CO/72/NET | Concluding observations on the third periodic report of the Netherlands (including the Netherlands Antilles and Aruba) |
| CCPR/C/CO/72/CZE | Concluding observations on the initial report of the Czech Republic |
| CCPR/C/CO/72/MCO | Concluding observations on the initial report of the Principality of Monaco |
| CCPR/C/CO/72/GUA | Concluding observations on the second periodic report of Guatemala |
| CCPR/C/CO/72/PRK | Concluding observations on the second periodic report of the Democratic People's Republic of Korea |

**D. Comments on the States parties' Concluding Observations**

| | |
|---|---|
| CCPR/C/CO/70/TTO/Add.1 | Comments by Trinidad and Tobago on the concluding observations of the Human Rights Committee |
| CCPR/C/CO/71/SYR/Add.1 | Comments by the Government of the Syrian Arab Republic on the concluding observations of the Human Rights Committee |

**E. General Comments**

| | |
|---|---|
| CCPR/C/21/Rev.1/Add.11 | General Comment No. 29, article 4 of the Covenant |

### F. Provisional agendas and annotations

| | |
|---|---|
| CCPR/C/142 | Provisional agenda and annotations (seventieth session) |
| CCPR/C/143 | Provisional agenda and annotations (seventy-first session) |
| CCPR/C/144 | Provisional agenda and annotations (seventy-second session) |

### G. Summary records

| | |
|---|---|
| CCPR/C/SR.1868 to 1896 | Summary records of the seventieth session |
| CCPR/C/SR.1897 to 1926 | Summary records of the seventy-first session |
| CCPR/C/SR.1927 to 1955 | Summary records of the seventy-second session |

### H. Committee's contribution to the World Conference against Racism

| | |
|---|---|
| A/CONF.189/PC.2/14 | Contribution of the Human Rights Committee to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (13 March 2001) |

## Annex IX

## EXCERPTS FROM THE COMMITTEE'S CONTRIBUTION TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (A/CONF.189/PC.2/14)

1. The Human Rights Committee shares the concern of the international community that racism continues to be a scourge on humanity and to jeopardize peace and security in the world. As a contribution to the Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Committee has prepared a compilation of materials reflecting the work of the Committee under the International Covenant on Civil and Political Rights in relation to racism and connected issues.

2. The Committee has considered reports under article 40 of the Covenant from several States parties with significant problems of racial discrimination and concerning the protection of indigenous and other cultural, religious and linguistic minorities.

3. Under the communications procedure governed by the Optional Protocol to the International Covenant on Civil and Political Rights, there have been few cases which directly raised issues of racial discrimination. The Committee has, however, dealt with a number of communications in which the rights of members of indigenous minorities to the enjoyment of their culture and traditional economic activities were considered and defined. The Committee has also considered whether restrictions on freedom of expression could be justified to protect members of a minority from incitement to discrimination, hostility or violence arising from racial or religious hatred.

4. The work of the Human Rights Committee in the reporting process and under the communications procedure forms the basis of its General Comments, in which it sets out its views on the scope of the obligations of States parties under particular provisions of the Covenant. The Committee's General Comments are intended as a guide to States parties in the performance of their obligations under the Covenant and in the preparation of reports under article 40. The General Comments on discrimination (No. 18) and on the rights of minorities (No. 23), are of particular relevance to the consideration of racism and racial discrimination.

### Overview of issues relating to racial discrimination

5. The intention is to bring to the attention of participants in the Preparatory Committee for the World Conference who may not be familiar with the Covenant or with the Committee's work the relevant provisions of the Covenant together with illustrations of Committee decisions that relate to racism and connected issues, such as the rights of persons belonging to ethnic, linguistic and religious minorities. Some of the issues surveyed by the Committee that relate to racial discrimination are summarized in the following paragraphs.

**Guarantee of equality, articles 2.1 and 26**

6. The rights protected by the Covenant must be ensured to all individuals, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (art. 2, para. 1, and art. 26). The entitlement, under article 2.1, to enjoy the rights under the Covenant without distinction applies to all individuals within the territory or under the jurisdiction of a State.

7. In order to fulfil the obligation to ensure rights to all persons, without distinction, States must not only refrain from discrimination but also take positive measures necessary to ensure the equal enjoyment of rights (GC No. 18, para. 10). In its General Comment No. 28 on article 3, a provision specifically addressed to the equal enjoyment of rights by women, the Committee stated:

> "The obligation to ensure to all individuals the rights recognized in the Covenant, established in articles 2 and 3 of the Covenant, requires that State parties take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment of such rights, the education of the population and of State officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant." (para. 3)

8. Those observations apply also to the equal enjoyment of all Covenant rights without distinction on the ground of race or religion or other grounds specified in article 2.1.

9. The right to non-discrimination is not limited to the equal enjoyment of rights specified in the Covenant. By virtue of article 26, there is a right to protection against discrimination in law or in fact in any field regulated and protected by public authorities (GC No. 18, para. 12). Article 26 protects the right to equality before the law and equal protection of the law; it requires that discrimination be prohibited in the public and private sectors, and guarantees to all persons equal and effective protection against discrimination on any grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 thus provides an autonomous right to non-discrimination which governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers on individuals under its jurisdiction.

**Meaning and scope of discrimination**

10. The Committee considered the meaning and scope of discrimination in its General Comment No. 18. This General Comment defines discrimination under the Covenant in these terms:

> "the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." (para. 7)

11. The Committee took into account the definitions of discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women in defining discrimination. (General Comment No. 18, paragraphs 6 and 7)

12. The test of whether a distinction amounts to discrimination prohibited by the Covenant was set out in General Comment No. 18 in these terms:

> "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant." (para. 13)

13. In dealing with State party reports, the Committee has found that Constitutions and domestic legislation do not always adequately protect against discrimination on all grounds set out in articles 2.1 and 26.

**Racial discrimination, articles 2.1 and 26**

14. In its consideration of State parties' reports under article 40 of the Covenant, the Human Rights Committee has encountered situations where racism and intolerance are directed against minority groups, migrants or asylum-seekers. This discrimination is incompatible with the principle of equality and the equal enjoyment of rights. In some States, persistent and long-standing prejudice and discriminatory attitudes have led to lower standards of living and social exclusion for certain minority groups.

15. The Covenant requires States to take positive action to ensure equality and the Committee has recommended the adoption of effective legal measures to prohibit discrimination in public and private fields and to ensure effective remedies to the victims. It has also recommended that States take positive measures to remedy the effects of racism and discrimination, including such measures as community education and media campaigns to overcome racism and intolerance.

16. In respect of some States parties, allegations were made that police had abused their powers by ill-treating members of racial and ethnic minorities, or that they had failed to take action in respect of complaints of racial harassment or discrimination. The Covenant requires that victims be provided with effective remedies in respect of any such violations of their rights. It also requires States to take positive action to ensure equality. The Committee has recommended that States take action in respect of alleged violations by its police and security forces and that they introduce or expand the education and training of law enforcement officers and recruit members of minority groups into the forces.

17. The Committee has condemned gross violations of the rights of ethnic, religious and linguistic minorities in some countries, including massacres, mass expulsions ("ethnic cleansing"), summary or arbitrary executions, forced or involuntary disappearances, torture, arbitrary arrests, rape and pillage committed by security forces, militias and armed civilians. The Committee has urged the States concerned to take immediate and effective action to end the

violations, to combat ethnic and racial hatred, and to bring the perpetrators to justice. It has recommended that prompt investigations be initiated to bring all those responsible for such violations to trial and that the victims be provided with remedies.

18. The Committee has observed that racism, racial discrimination and xenophobia contribute to discrimination against women and other violations of their rights, including the cross-border trafficking of women and children, and enforced prostitution and other forms of forced labour disguised inter alia as domestic or other kinds of personal service. The Committee has asked States to take measures, national and international, to protect women and children, including foreign women and children, from these violations of their rights. (General Comment No. 28, paragraphs 12 and 30)

**Incitement to racial discrimination or violence**

19. Article 20.2 of the Covenant requires States to take specific measures to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In its General Comment on article 20, the Committee expressed the view that for article 20 to become fully effective there ought to be a law making it clear that advocacy as described therein is contrary to public policy, and providing for an appropriate sanction in case of violation. In some cases the media has been used to incite hostility and violence among the various population groups in clear violation of the provisions of article 20 of the Covenant. The Committee has on several occasions had to call on States to take positive action to enforce the prohibition on incitement to discrimination, hostility or violence on racial grounds.

20. The connection between article 20.2 and religious freedom was considered by the Committee in its General Comment No. 22 on freedom of thought, conscience and religion (art. 18). The Committee observed that the measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. It also emphasized that, in accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. (General Comment No. 22 on article 18, paragraphs 7 and 9)

21. In the opinion of the Committee, the prohibitions required by article 20.2 are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. The relationship between these two provisions was brought to the Committee's consideration in two cases, Faurisson v. France (550/1993, Views adopted 8 November 1996) and Ross v. Canada (736/1997, Views adopted on 18 October 2000), where restrictions on the authors' freedom of expression in connection with the publication and dissemination of anti-Semitic opinions, were held to be necessary and proportionate in order to protect the rights of members of the Jewish community from advocacy of racial or religious hatred and incitement to discrimination, hostility or violence (summaries annexed).

**Related areas of discrimination, articles 2.1 and 26**

22. Discrimination is sometimes based on grounds closely related to race, such as national origin or religion. The provisions of the Covenant and the work of the Committee on these related issues is relevant to the consideration of racism, racial discrimination and xenophobia.

23. A number of States make distinctions between citizens and aliens which are not justifiable; for example, they may expressly confer rights on citizens only. As the Committee made clear in paragraph 1 of its General Comment No. 15:

> "each State party must ensure the rights in the Covenant to 'all individuals within its territory and subject to its jurisdiction' (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness."

24. While there are some specific exceptions (e.g. political participation under article 25), aliens must benefit from the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant (General Comments No. 15, paragraph 2, and No. 27, paragraphs 4 and 18). Consequently, the general rule is that each one of the rights of the Covenant must be guaranteed, without discrimination between citizens and aliens.

25. Thus, in Gueye v. France (196/1985, Views adopted on 3 April 1989), the Committee held that it was not justifiable to give lesser pension entitlements to persons of Senegalese origin who had previously served in the French Armed Forces, on the ground that they were no longer French citizens. The change in nationality, resulting from the independence of Senegal, could not be itself sufficient justification for different treatment of the authors, since the basis for the pension was the same service which both they and the soldiers who remained French had provided.

26. Racial discrimination can be closely linked to religious intolerance and discrimination. In some countries long-standing conflict between groups of differing religions and ethnicity has contributed to serious violations of rights, including the massive violations referred to earlier.

27. In its General Comment on article 18, the Committee emphasized that freedom of thought, conscience and religion extends to all religions including minority religions and newly established religions:

> "Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a dominant religious community." (General Comment No. 22, paragraph 2)

28. The Covenant requires that there be no unjustifiable discrimination between religions in the provision of public funding for school education. Waldman v. Canada (Communication No. 694/1996, Views adopted in November 1999).

**Rights of members of minorities, article 27**

29. The protection of rights of members of minorities provided for by article 27 of the Covenant is closely connected with their protection against discrimination. Article 27 of the Covenant provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Committee has pointed out that the rights conferred by this provision are distinct from, and additional to, the other rights which individual members of minority groups are already entitled to enjoy under the Covenant, including the right to equality and non-discrimination on racial, religious, linguistic or other grounds. On this basis it does not accept the claim advanced by some States parties that, because they do not discriminate on grounds of ethnicity, language or religion, they have no minorities to whom article 27 could apply (General Comment No. 23 on article 27, paragraph 4).

30. The individuals protected by article 27 need not be citizens of the State party nor permanent residents (General Comment No. 23, paragraphs 5.1, 5.2). Nor does the Committee consider it compatible with article 27 to limit the recognition of minorities in certain ways, for example to linguistic minorities. The Committee has emphasized that the rights protected by article 27 apply to members of any minority group existing in a State who share in common a culture, a religion and/or a language (General Comment No. 23, paragraph 5.1). Article 27 thus extends to the protection of the rights of members of indigenous minorities, as well as to migrants and members of all cultural, religious and linguistic minorities that exist in the State.

31. The exercise by persons belonging to minorities of rights protected by article 27 depends on the ability of the minority group to maintain its culture, language or religion. Because of this, positive measures by States may be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group (General Comment No. 23, paragraph 6.1). Any such measures should be non-discriminatory. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

32. In considering reports under article 40 of the Covenant, the Committee has called on States to take positive action where necessary to support the right of ethnic and religious minorities to pursue and develop their traditions, culture and language, to support cultural and ethnic diversity, to support educational and cultural rights, to secure language rights for minorities and to recognize the right to use minority languages in official communications.

33. Particular problems are experienced by members of indigenous minorities in enjoying their rights under the Covenant, including the right to enjoy their traditional culture. The

Committee has found in its examination of States parties' reports that members of indigenous communities have often been denied equality, and that their enjoyment of rights has been seriously affected by long-standing racial discrimination. They may experience high levels of poverty and ill health, disadvantage in access to health care, education and employment. They often have a very low proportion of representation in public office and public service.

34. In its General Comment No. 23 on article 27, the Committee observed that culture may manifest itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. The right to enjoy culture extends to such traditional activities of indigenous communities as fishing or hunting and the right to live in reserves protected by law (General Comment No. 23, paragraph 7). See Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada (Communication No. 167/1984, Views adopted on 26 March 1990) and Kitok v. Sweden (Communication No. 197/1985, Views adopted on 27 July 1988).

35. The Committee has stressed that the enjoyment of rights by indigenous minorities may require positive legal measures of protection, and that steps may need to be taken to ensure that indigenous people are able to participate effectively in decision-making which affects them, particularly in regard to the use of their traditional lands and resources and the sustainability of their traditional economic activities.

## Appendix I

## NOTES ON CASES ADOPTED BY THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

### Kitok v. Sweden, Communication No. 197/1985, Views adopted on 27 July 1988

The author, a Sami of Swedish nationality, complained that he had been arbitrarily denied his ancestral right to membership of the Sami community and to carry out reindeer breeding by his formal exclusion from the community. He claimed to be the victim of a violation of article 27 of the Covenant.

The Committee's View was that the regulation of an economic activity is normally a matter for the State alone. However, where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under article 27 of the Covenant. It was not disputed that reindeer breeding was an essential component of the Sami culture. The restrictions had been imposed to protect the environment and continued existence of the indigenous Sami culture. The Committee noted that there was conflict between the protection of the minority as a whole and the application of the rules to individual members. It concluded that there was a reasonable and objective justification for the rule. The Committee found no violation of article 27. (Similar principles were applied by the Committee in the case of Mahuika et al. v. New Zealand, Communication No. 547/1993, Views adopted in October 2000.)

**Gueye v. France, Communication No. 196/1985,
Views adopted on 3 April 1989**

Seven hundred and forty-three retired soldiers of Senegalese nationality who had served in the French Army before independence had their pensions frozen by legislation in 1974. This law did not apply to former soldiers who were French citizens. The question for the Committee was whether it was compatible with the Covenant to distinguish between former members of the French Army, based on whether they were French nationals or not, in regard to their pensions.

The Committee found no evidence to support the allegation that the State party had engaged in racially discriminatory practices vis-à-vis the authors. Although nationality is not mentioned as a prohibited ground of discrimination in the Covenant, in the Committee's opinion the differentiation by reference to the nationality of the authors acquired upon independence fell within the reference to "other status", a ground covered by article 26. The difference in treatment was not based on reasonable and objective criteria and constituted discrimination prohibited by the Covenant. A violation of article 26 was found.

**Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada,
Communication No. 167/1984, Views adopted on 26 March 1990
(A/45/40, vol. II)**

The author alleged violations by the Government of Canada of the Lubicon Lake Band's right of self-determination and, by virtue of that right, to determine freely its political status and pursue its economic, social and cultural development, as well as the right to dispose freely of its natural wealth and resources and not to be deprived of its own means of subsistence. The circumstances were that, despite laws and treaties, the Government of Canada had allowed the provincial government of Alberta to expropriate the territory of the Band for the benefit of private corporate interests, including leases for oil and gas exploration.

The Committee determined that it could not deal with the question of whether the Lubicon Lake Band was a "people" under the Optional Protocol and could not, therefore, consider whether their right to self-determination under article 1 of the Covenant had been violated. Nevertheless, groups of individuals claiming to be similarly affected could submit a communication about alleged breaches of their rights. The authors were not obliged to pursue remedies through litigation unless they were likely to be effective in restoring the traditional or cultural livelihood of the Lubicon Lake Band, which was at the time allegedly at the brink of collapse.

The Committee acknowledged that many of the claims presented by the authors raised issues under article 27, which protects the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong (para. 32.2). The Committee recognized (para. 33) that "historical inequities and more recent developments threaten the way of life and culture of the Lubicon Lake Band and constitute violation of the Band's collective right to enjoy its traditional way of life and culture, a violation of article 27 so long as they continue". The Committee noted that the State party proposed to rectify the situation by a remedy deemed appropriate.

**Faurisson v. France, Communication No. 550/1993,**
**Views adopted on 8 November 1996**

The author in this case was convicted of an offence against the French law outlawing denial of the Holocaust. The background to his conviction was an interview given to a French magazine in which the author spoke of the "mythical" gas chambers in Auschwitz and intimated that the Jews had invented the "myth" of the Holocaust for their own purposes. The author claimed that in convicting him for this offence the State party had violated his right to freedom of expression under article 19 of the Covenant. The Committee was unanimous in deciding that there had been no violation, although a number of members appended separate concurring opinions to the Committee's Views.

The Committee was of the opinion that, while the conviction of the author involved a restriction on his freedom of expression, this restriction was justified under article 19, paragraph 3. The rights in respect of which restrictions may be placed under this paragraph include not only the rights of individuals, but of groups too. Thus a restriction placed in order to protect an ethnic, national or religious group's right not to be subjected to racial incitement may be a legitimate restriction. In this case the restriction on the author's freedom of expression was necessary in order to protect the Jewish community in France against anti-Semitism. In their concurring opinions, several members stressed the connection between the restriction placed on freedom of expression in this article and article 20, paragraph 2, of the Covenant, which obligates States parties to prohibit by law incitement to discrimination, hostility or violence.

Some members saw fit to emphasize that while a law that prohibits denial of "historical truths" is problematical, use of such a law in cases involving racial incitement is legitimate.

The Committee adopted a similar approach in the case of Ross v. Canada, (Communication No. 736/1997, Views adopted on 18 October 2000). In this case, the author, a teacher, had been removed from his teaching position by decision of a board of inquiry, because of repeated public statements which denigrated the faith and beliefs of Jews and called upon those of Christian faith not only to question the validity of Jewish beliefs and teachings but to hold individuals of Jewish faith and ancestry in contempt as undermining democracy, freedom and Christian beliefs and values. The Committee, following the reasoning in Faurisson, considered that the removal of the author from a teaching position could be considered as a restriction that was necessary to protect the right and freedom of Jewish children to have a school system free from bias, prejudice and intolerance.

**Waldman v. Canada, Communication No. 694/1996,**
**Views adopted in November 1999**

The author complained that he was the victim of discrimination by the Ontario Government because public funds were provided for Roman Catholic schools but not for schools of the author's religion. As a result, he had to meet the full cost of school education in a religious school.

The Committee rejected the argument of the State party that, because the preferential treatment of Roman Catholic schools was a constitutional obligation it could not be considered discriminatory. The differences in treatment between Roman Catholic religious schools which were publicly funded as a distinct part of the public education system and schools of the author's religion which were private by necessity could not be considered reasonable and objective. The Committee observed that the Covenant does not oblige States parties to fund schools which are established on a religious basis. However, if a State party chooses to provide public funding to religious schools, it should make this funding available without discrimination. In the absence of reasonable and objective criteria for providing funding for schools of one religion and not for those of another, the Committee found that the author's rights under article 26 had been violated.

---

01-60226 (E) 291001